Supreme Court, U. S.
FILED
NOV 20 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1646

PETER C. ANDRESEN,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR CERTIORARI FILED JUNE 28, 1975
CERTIORARI GRANTED OCTOBER 6, 1975

ABE DUPLICATORS, INC.—1732 'Eye Street, N.W.—Washington, D.C.—298-6937

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Defendant sentenced to Division of Correction for the period of Two Years on the 3rd Count to run concurrent with sentence in No. 3100 Criminals; Two Years on the 4th Count to run concurrent with sentence on the 3rd Count and with sentence in No. 3100 Criminals; Two Years on the 7th Count to run concurrent with sentence on 3rd and 4th Counts and with sentence in No. 3100 Criminals; Two Years on the 8th Count to run concurrent with sentence

on the 3rd, 4th and 7th Counts and with sentence in No. 3100 Criminals; Two Years on the 11th Count to run concurrent with sentence on the 3rd, 4th, 7th and 8th Counts and with sentence in No. 3100 Criminals and Two Years on the 12th Count to run Concurrent with sentence on 3rd, 4th, 7th and 11th Counts, + all dating from the 5th day of October 1973 or on date mandate is returned from the Court of Special Appeals if Appeal is timely filed, October 5, 1973

[dated October 30, 1972]

SEARCH WARRANT

STATE OF MARYLAND

vs

THE PREMISES KNOWN AS LAW OFFICES OF PETER CHRISTIAN ANDRESEN, A PARTICULAR BUILDING WITHIN THE COMPLEX OF OFFICES AND STORES KNOWN AS 3700 DECATUR AVENUE WITH NUMERALS 3700 SHOWN TO THE LEFT OF THE ENTRANCE WAY, SAID PREMISES LOCATED ON THE SECOND FLOOR OF A TWO STORY RED BRICK BUILDING WITH ONLY THE SECOND FLOOR FRONTING ON DECATUR AVENUE, THE DESCRIPTION OF SAID PREMISES APPEARS ON WINDOWS TO THE LEFT OF ENTRANCE WAY, AS WELL AS WINDOWS ON THE SECOND FLOOR FACING CONNECTICUT AVENUE AS "LAW OFFICES PETER CHRISTIAN ANDRESEN," ALL OF WHICH IS LOCATED IN KENSINGTON, MONTGOMERY COUNTY, MARYLAND.

STATE OF MARYLAND
MONTGOMERY COUNTY:

TO: Kenneth W. Watkins, Superintendant of the Department of Police, Montgomery County, Maryland, or any other person authorized or whose assistant is requested or is needed. Greetings:

Whereas an affidavit having been made before me by Special Investigators Austin A. Moyer and Joseph L. Lawrence of the Bi-County Major Frauds Unit of the Montgomery County and Prince George's County State's Attorneys' Offices, that they have probable cause to believe that on the premises known as Law Offices of Peter Christian Andresen, a particular building within the complex

of offices and stores known as 3700 Decatur Avenue with numerals 3700 shown to the left of the entrance way, said premises located on the second floor of a two story red brick building with only the second floor fronting on Decatur Avenue, the description of said premises appears on windows to the left of entrance way as well as windows on the second floor facing Connecticut Avenue as "Law Offices Peter Christian Andresen," all of which is located in Kensington, Montgomery County, Maryland there are now concealed upon said premises the following items pertaining to sale, purchase, settlement and conveyance of lot 13, block T, Potomac Woods subdivision, Montgomery County, Maryland:

title notes, title abstracts, title rundowns; contracts of sale and/or assignments from Raffaele Antonelli and Rocco Caniglia to Mount Vernon Development Corporation and/or others; lien payoff correspondence and lien pay-off memoranda to and from lienholders and noteholders; correspondence and memoranda to and from trustees of deeds of trust; lenders instructions for a construction loan or construction and permanent loan; disbursement sheets and disbursement memoranda; checks, check stubs and ledger sheets indicating disbursement upon settlement; correspondence and memoranda concerning disbursements upon settlement; settlement statements and settlement memoranda; fully or partially prepared deed of trust releases, whether or not executed and whether or not recorded; books, records, documents, papers, memoranda and correspondence, showing or tending to show a fradulent intent, and/or knowledge as elements of the crime of false pretenses, in violation of Article 27, Section 140, of the Annotated Code of Maryland, 1957 Edition, as amended and revised, together with

other fruits, instrumentalities and evidence of crime at this unknown.

The grounds for search and basis for probable cause are set forth in the attached Application for the issuance of a search warrant, which grounds are as fully specified in the attached Application and Affidavit affixed hereto and made a part of this search warrant.

You are therefore commanded, with the necessary and proper assistance to:

(a) Enter and search the suspected premises, as completely described as aforesaid;

(b) Open and search any desks, cabinets, safes, and any other items and places within the captioned premises;

(c) Seize all evidence and paraphernalia permitted by law;

(d) And bring said evidence and paraphernalia before me, the subscriber, or some other judge of the 6th Judicial Circuit, to be retained according to law.

Hereof fail not at your peril and have you then and there this warrant.

Given under my hand this 30th day of October, in the year of our Lord, One Thousand nine hundred and seventy two.

/s/ signature illegible

Judge of the Sixth Judicial Circuit
Montgomery County, Maryland

[dated October 30, 1972]

* * *

APPLICATION AND AFFIDAVIT FOR A SEARCH WARRANT

TO: The Honorable Judges of the Sixth Judicial Circuit of Maryland

Application is herewith made for a Search and Seizure Warrant in that there is probable cause to believe that the laws relating to false pretenses, as defined in Article 27, Section 140 of the Annotated Code of Maryland, 1957 Edition as Amended and revised are being violated upon the following premises:

A particular building within the complex of office buildings and stores known as 3700 Decatur Avenue with the numerals 3700 shown to the left of the entrance way, said premises located on the second floor of a two story red brick building with only the second floor of same fronting on Decatur Avenue. The description of premise appears on windows to the left of entrance way, as well as windows on the second floor facing Connecticut Avenue as "Law Offices Peter Christian Andresen", all of which is located in Kensington, Montgomery County, Maryland.

The names of your affiants are Special Investigator (S/I) Austin A. Moyer and Special Investigator (S/I) Joseph L. Lawrence of the Bi-County for Montgomery County, Maryland and the State's Attorney for Prince George's County, Maryland.

The facts tending to establish the grounds for this application and the basis for probable cause are as follows:

On or about October 25, 1972, and on previous occassions, S/I Austin A. Moyer interviewed George Young

and Audrey E. Young, and they related to him the following:

That George Young and Audrey E. Young are and have been, respectively, Secretary and President of both Young Contracting Company, Inc. and Steven Development Corporation. On or about May 8, 1972 Young Contracting Company, Inc. and Standard Investment Corporation (a subsidiary of Standard Savings and Loan Association of Gaithersburg) formed a joint venture known as Standard-Young Associates, for the purpose of dividing all joint real estate development profits and losses on a 50%-50% net basis. Your affiants have in their possession and have read the Standard-Young Associates Joint Venture agreement and George and Audrey E. Young's representations are correct. They also represented to S/I Moyer that over the years they have had numerous business transactions for which Peter C. Andresen was the legal counsel and settlement attorney and these transactions were successfully consummated and to the best of the Young's knowledge competently performed, thus causing them to strongly rely upon what they considered to be Andresen's expert legal counseling.

George Young and Audrey E. Young also related to S/I Moyer that on or about July 18, 1972 they were present in the law offices of Peter C. Andresen, 3700 Decatur Avenue, Kensington, Maryland for the purpose of settlement of their purchase from the seller of lot 13, block T, Section 10, Potomac Woods subdivision, Montgomery County, Maryland (hereinafter referred to as 13T). As a consequence of this settlement, Young Contracting Company, Inc. was conveyed title to 13T from the legal titleholders, Raffaele Antonelli and Rocco Caniglia, by

deed dated June 4, 1972, and recorded in the land records of Montgomery County on July 19, 1972 at 10:10 A.M. in liber 3922, folio 344 (a copy of which is attached hereto and made a part hereof as Exhibit #1). Raffaele Antonillo and Rocco Caniglia had been conveyed title to 13T by Clark-King Construction Company, Inc. by deed dated October 31, 1969 and recorded in the land records of Montgomery County on November 28, 1969 at liber 3922, folio 344 (a copy of which is attached hereto and made a part hereof as Exhibit #2). In this transaction, Andresen was the settlement attorney for Raffaele Antonelli according to him.

During the course of this settlement, George Young inquired of Peter C. Andresen, who was acting as settlement attorney for both seller and buyer, whether or not it was necessary for them to obtain for Young Contracting Company, Inc., in whose name the property was to be titled, title insurance to the extent of the $12,000.00 purchase price of the property. Andresen responded, "No, you don't . . . The title is clear . . . It's a good deal." Considering Andresen's statements as being a competent expert's opinion, they relied upon them and did not purchase owner's title insurance at this time. Thereupon, George Young paid to Andresen the sum of $7,000.00 and George Young and Audrey E. Young, on behalf of Young Contracting Company, Inc., executed a $5,000.00 promissory note (a copy of which is attached hereto and made a part hereof as Exhibit #3) to the contract seller, secured by a deed of trust (a copy of which is attached hereto and made a part herof as Exhibit #4), thereby totaling a sales price of $12,000.00 which was called for by the sales contract for 13T dated June 19, 1972 (a copy of which is attached hereto and made a part hereof

as Exhibit #5). Your affiants here note that on October 25, 1972 S/I Lawrence interviewed Raffaele Antonelli who produced what he termed to be all the papers he and his partner, Rocco Caniglia, possessed concerning their purchase and sale of 13T and he produced only a partially executed copy of what allegedly was his and his partner's contract with Mount Vernon Development Corporation for the sale of 13T (attached hereto and made a part hereof as Exhibit #6).

Additionally, the aforesaid sales contract dated June 19, 1972 provided for the "Broker to accept [the] deed of trust and note for commission and pay $3,000.00 cash to seller for endorsement thereof" and that "The Seller recognizes Kensington Associates Realty, Inc., as the Agent(s) negotiating this contract", and agrees to pay a brokerage fee as the commission has been defined; that is, the $5,000.00 promissory note made by Young Contracting Company, Inc. was to be assigned to the broker upon payment of $3,000.00, so that there resulted a $2,000.00 commission. The contract was signed Peter Andresen, Broker or Sales Manager. The stock ledger sheets of Kensington Associates Realty, Inc. in your affiants' possession indicate that as of the end of September, 1972 a total of 100 shares of Kensington Associates Realty, Inc., were issued and they are owned by Peter Andresen. The stock ledger sheets of Mount Vernon Development Corporation — the contract seller of 13T and signitory to the sales contract of June 19, 1972 — in your affiants' possession, indicate that as of the end of September, 1972 a total of 100 shares of Mount Vernon Development Corporation were issued and they are held by "Peter C. Andresen, attorney Trustee for owners" with no explanation in the minute book (as of the end of September, 1972),

which is also in your affiants' possession, as to the identity of the alleged "owner" for whom Andresen is holding the shares in trust. In the cases of both Kensington Associates Realty, Inc. and Mount Vernon Development Corporation, the shares held by Peter C. Andresen are the total number of shares which have been issued. The latest Articles of Incorporation of Mount Vernon Development Corporation, which describe its business as that of real estate construction and financing, dated April 26, 1967, and which are presently on file with the Clerk of the Circuit Court for Montgomery County and which have been read by your affiants, indicate that Peter C. Andresen is an incorporator, resident agent and director of Mount Vernon Development Corporation, and that "the directors [who] shall act until the first annual meeting or until their successors are duly chosen and qualfied ***". The minute book (as of the end of September, 1972), which is in your affiants' possession, indicates no meetings or proceedings, as is required by Maryland law, of Mount Vernon Development Corporation have ever transpired. On March 13, 1972, Ira Burdette, who described himself as a general superintendant for Andresen's real estate construction businesses, told your affiants that "Andresen was the owner of all the corporations" and Ira Burdette mentioned that Mount Vernon Development Corporation was one of them. In early September, 1972 John Sivers, who described himself as the president of the mother corporation which Andresen in fact "owned" and operated for his own benefit, also stated that Andresen in fact "owned" and controlled Mount Vernon Development Corporation for Andresen's own personal gain.

In addition to the $2,000.00 broker's commission Andresen received, George Young and Audrey E. Young relate

that they paid Andresen $50.00 for the settlement of the sale of 13T of the monies of the Standard-Young Associates Joint Venture, and this is evidenced by the buyer's settlement sheet for 13T which is in your affiants' possession. Furthermore, your affiants have spoken to various representatives, including Robert Freedman, general counsel and a director, of Standard Savings and Loan Association of Gaithersburg, and your affiants have thereby been informed that Andresen has represented George Young and Audrey E. Young in their business matters for several years, that Andresen mostly, if now always, handled the property purchase settlements and the various Standard Savings and Loan construction loan settlements for Young Contracting Company, Inc. and Steven Development Corporation and that Andresen was aware of the Standard-Young Associates Joint Venture from its inception since, among other reasons, Andresen prepared the Articles of Incorporation for Young Contracting Company, Inc., and that Standard Savings and Loan Association of Gaithersburg would have the Standard-Young Associates Joint Venture construction loans settled with the attorney of George Young's choosing. George Young related to S/I Moyer this same information concerning Andresen being their legal counsel regarding business and settlement matters and that Andresen actually knew of the Standard-Young Associates Joint Venture and that 13T was such a joint venture because George Young had told him prior to the 13T transaction. Therefore, your affiants conclude that by selling 13T to Young Contracting Company, Inc. for purposes of a Standard-Young Associates Joint Venture, with Standard Savings and Loan Association of Gaithersburg giving the construction loan, that Andresen would obtain the fees for the settlement of that construction loan.

George Young and Audrey E. Young related to S/I Moyer that on or about July 18, 1972 Andresen did in fact settle the $52,000.00 construction loan from Standard Savings and Loan Association of Gaithersburg to Young Contracting Company, Inc. for construction of a residence on 13T, and that they paid Andresen a settlement fee for conveying the property for the assoc. Standard Savings and Loan Association of Gaithersburg was issued an executed mortgagee's title insurance policy by the Title Insurance Company of Minnesota (hereafter referred to as TIM), which is in the possession of your affiants, based upon the report and certification of title prepared and signed by Peter Andresen and dated as certified to July 19, 1972 at 10:10 A.M., which is in the possession of your affiants, in consideration of a $145.00 premium paid by the Association according to George Young and Audrey E. Young who conveyed the $145.00 to Andresen. Andresen, as sub-agent for TIM, the record of Andresen's being appointed sub-agent being in your affiants possession, received $32.25 or more in commissions for issuing this mortgagee's title insurance policy, according to the representations and records, which are in your affiants' possession, of Frank W. Marsalek, Executive Vice President of Shenandoah Land Title Corporation, who represents that he is the Maryland agency for TIM, and which TIM in turn confirms. Andresen's final report and certification of 13T which Frank W. Marsalek relates caused him to issue the mortgagee's title insurance policy represents that no mortgages or deeds of trust were at that time outstanding against 13T. In fact, a review of the pertinent land records of Montgomery County by Deborah Nalls (described hereinafter) indicates to your affiants that the following notes secured by recorded deeds of trust were existing encumbrances at that time: (a) a

deed of trust securing a note at liber 3773, folio 598 (a copy attached hereto and made a part hereof as Exhibit #7), recorded on August 2, 1968 against 13T and other lots, from Clark-King Construction Company, Inc. to Peter C. Andresen and William H. Matthews, trustees, securing State National Bank of Bethesda for $31,000 (hereinafter referred to as State National D/T) and which has never been paid as to 13T and which was not released as to 13T until October 3, 1972, in liber 4281, folio 589 (a copy of which is attached hereto and made a part hereof as Exhibit #8) according to Bruce E. Covert, Senior Vice President of State National Bank of Bethesda on October 26, 1972; and (b) a deed of trust securing a note at liber 3797, folio 799 (a copy of which is attached hereto and made a part hereof as Exhibit #9), recorded on October 9, 1968 against 13T and other lots, from Clark-King Construction Company, Inc. to James Salter III and Owen M. Taylor, trustees, securing Arthur Dale Lumsden (assigned to Madison National Bank, June 4, 1971) for $24,000 (hereinafter referred to as Madison D/T), and which has never been paid nor released according to Norman Hecht, Vice President of Madison National Bank on October 27, 1972, and both of which have been confirmed by a diligent examination of the land records of Montgomery County by Deborah Nalls, Investigator/ Research Assistant for the Bi-County Major Frauds Unit who for several years was employed by a law firm in Montgomery County for the purpose of searching land titles.

Robert Freedman of Standard Savings and Loan Association of Gaithersburg related to your affiants during October, 1972 that Standard Savings and Loan Association had given the $52,000 Maryland construction loans on 13T

in reliance upon the TIM mortgagee's title insurance policy which stated that Standard Savings and Loan's construction loan was in fact a first deed of trust as is required by Maryland law to be given by a Savings and Loan Association. George Young represented to S/I Moyer that as of October 25, 1972 Standard-Young Associates had ceased building the residence of 13T pending threatened foreclosures pursuant to the State National D/T and the Madison D/T and had incurred losses involving $23,064.50 invested in the project.

George Young and Audrey E. Young related to S/I Moyer that on or about September 13, 1972 George Young learned from Standard Savings and Loan Association who in turn had learned from Madison National Bank, that Madison National Bank held a senior unpaid, unreleased deed of trust on 13T, namely, the Madison D/T. George Young stated that on that date he went to Andresen's law offices and inquired of him as to the status of title on 13T, and Andresen acknowledged the existence and non-payment of the State National D/T and the Madison D/T. George Young further related that he demanded an owner's title insurance policy on 13T and Andresen assented. Young Contracting Company, Inc. paid Andresen the premium and Young Contracting Company, Inc. (the Joint Venture titled 13T in that name) was issued an executed owner's title insurance policy by TIM, which is in the possession of your affiants, based upon the report and certification of title prepared and signed by Peter Andresen and dated as certified to July 19, 1972 at 10:10 a.m., a copy of which is in your affiants' possession. Andresen, as sub-agent for TIM, received no less that $11.50 in commission for issuing this owner's title insurance policy, according to the representations and records of Frank W. Marsalek, which are in your

affiants' possession. Andresen's final report and certification of 13T, which Frank W. Marsalek relates caused him to issue the owner's title insurance policy, represents that no mortgages of deeds of trust were at that time outstanding against 13T, except the aforementioned construction loan and the aforementioned deed of trust from Young Contracting Company, Inc. to Mount Vernon Development Corporation securing the aforementioned note for $5,000.00. In fact, the State National D/T and the Madison D/T were senior encumbrances and security for the unpaid notes.

Your affiant, S/I Joseph L. Lawrence, based upon his seven years of training and experience as a law enforcement officer and investigator, and based upon special training and experience he has received during the past 22 months investigating consumer and commercial frauds under the guidance, supervision, and tutelage of Jeffrey Russell Werner, an Assistant State's Attorney for Montgomery County for the past 40 months, who has received specialized training and education in the field of white collar fraud crimes, and whose duties as Director of the Bi-County Major Frauds Unit for the past six months have been confined exclusively to the investigation and prosecution of white collar frauds and especially the crime of false pretenses, has particular expertise as to the elements of the crime of false pretenses and the type and kind of evidence necessary to prove the crime of false pretenses.

Your affiant, S/I Austin A. Moyer, based upon his 22 years of training and experience as a law enforcement officer and investigator and based upon special training and experience he has received during the seven years

prior to May 1, 1972 with the Metropolitan Police Department of the District of Columbia and the Major Frauds Unit of the United States Attorney's Office for the District of Columbia, and since May 1, 1972 with the Bi-County Major Frauds Unit investigating consumer and commercial frauds under the guidance, supervision, and tutelage of Jeffrey Russell Werner, has particular expertise as to the elements of the crime of false pretenses and the type and kind of evidence necessary to prove the crime of false pretenses.

Your affiants related that they know that the crime of false pretenses in the State of Maryland is committed when a person (1) by making a false representation of a past or existing fact; (2) with intent to defraud; (3) with knowledge of its falsity; (4) obtains any chattel, money or valuable security from another; (5) who relies upon the false representation; (6) to his detriment.

Based upon the aforementioned partial description of your affiants' experience and training, and based upon the information which they pooled as the result of their conduct of this investigation, your affiants aver that there is probable cause to believe that at least four crimes of false pretenses have been committed and which have been described, wherein the victims are Young Contracting Company, Inc. and Standard Investment Corporation as the Standard-Young Associates Joint Venture in the purchase of 13T; Standard Savings and Loan Association of Gaithersburg as the lender of the 13T construction funds; TIM as the insuror of the 13T mortgagee's title insurance policy; and TIM as the insuror of the 13T owner's title insurance policy.

WHEREFORE, your affiants pray that a search and seizure warrant be issued authorizing them, together with

the necessary assistance, to enter the captioned premises and to search all desks, cabinets, closets, safes and other items and places within the captioned premises, where the following items may be concealed that directly pertain to the sale and conveyance of 13T from Raffael Antonelli and Rocco Caniglia to Mount Vernon Development Corporation to Young Contracting Company, Inc.:

1. Any and all title notes, title abstracts, and title rundowns.

2. Any and all fully executed contracts of sale and/or assignments from Raffaele Antonelli and Rocco Caniglia to Mount Vernon Development Corporation and/or others.

3. Any and all lien pay-off correspondence and lien pay-off memoranda to and from lienholders and noteholders.

4. Any and all correspondence and memoranda to and from trustees of deeds of trust.

5. Any and all lender's instructions for a construction loan or construction permanent loan.

6. Any and all disbursement sheets and disbursement memoranda.

7. Any and all checks, check stubs and ledger sheets indicating disbursements upon settlement.

8. Any and all correspondence and memoranda concerning disbursements upon settlement.

9. Any and all settlement statements and settlement memoranda.

10. Any and all fully or partially prepared deed of trust releases, whether or not executed and whether or not recorded.

11. Any and all other books, records, documents, papers, memoranda, and correspondence, showing or tending to show a fraudulent intent and/or knowledge as elements of the aforementioned four false pretenses crimes.

Furthermore, the aforementioned recorded State National D/T and recorded Madison D/T (copies of which are attached hereto and made a part hereof as Exhibits #7 and #9), reveal that in addition to 13T, numerous other lots located in Section 10 and other sections of the aforementioned Potomac Woods are or were held as security for those two deeds of trust, and the aforesaid diligent search of the land records by Deborah Nalls indicates that as of October, 1972 there existed among the land records no documents indicating a substitution or change of those lots held as security for those deeds of trust. Exhibits #7 and #9 also indicate that the equitable titleholder of those lots formerly or presently held as security for the State National D/T and Madison D/T (including 13T) was Clark-King Construction Company, Inc., and the aforesaid diligent search of the land records by Deborah Nalls indicates that as of October, 1972 said equitable title remains in Clark-King Construction Company, Inc. unless sold and conveyed to a home buyer or the home buyer's permanent financer, the latter being the case as to most, but not all, of the said lots. According to Bruce E. Covert and Norman Hecht, the notes secured by the State National D/T and the Madison D/T, respectively, have been paid in part and partial releases of the respective deeds of trust have been signed as authorized

to be released by them or by their agent; copies of their records which are in your affiants' possession confirm each of their statements and indicate that they have each been the person in charge of the making and payment of the respective notes for their banks. On October, 19, 1972 S/I Moyer interviewed William Hancock and E. Harold Patterson who related that they owned County-Wide Realty Company, Inc. and that their corporation had an exclusive brokerage on the Potomac Woods lots on which Clark-King Construction Company, Inc. held the equitable title and was the builder of residential houses thereon. They related that Andresen has settled most, if not all, of these homes and that he is to settle the home on lot 16, block S, Potomac Woods "within the next few weeks or so." On October 19, 1972 S/I Lawrence interviewed Peter Hitchen, who represented himself to be the Comptroller of the F. O. Day Company, Inc., and who produced various records which are in your affiants' possession and which indicate to your affiants that he in fact is the Comptroller of the F.O. Day Company, Inc., who related that Clark-King Construction Company, Inc. is indebted to F. O. Day Company, Inc. in the form of an unpaid note secured by a deed of trust from Clark-King Construction Company, Inc. to Peter C. Andresen and William C. Wheeler, trustees, securing F. O. Day Company, Inc. for $37,000.00 and which is recorded at liber 3934, folio 772 (a copy of which is attached hereto and made a part hereof as Exhibit #10). Peter Hitchen further related that Andresen prepared and signed his signature to a handwritten statement, a copy of which your affiants have in their possession, dated September 26, 1972 and which refers to and pertains to lot 16, block S, Potomac Woods, stating among other things that, "Said lot to be sold in approximately 40 days from date."

On October 19, 1972 S/I Lawrence interviewed Melvin L. Clark, Jr., who identified himself as President of Clark-King Construction Company, Inc., and whose corporate books and records, which are in your affiants' possession, confirm this, related that Peter Andresen had been the settlement attorney for himself as seller, and for the buyer, for most, if not all, of the numerous homes he has built on the lots Clark-King Construction Company, Inc. owns or owned before conveyance to the home buyer, in Potomac Woods.

Therefore, based upon the aforementioned partial description of your affiants' experience and training, and based upon the information which they pooled as the result of their conduct of this investigation, your affiants further aver that there is probable cause to believe that there exists within the confines of the captioned premises books, records, documents, papers, memoranda, and correspondence, which are, include and pertain to, title notes, title abstracts, and title rundowns; lein pay-off figures and amounts to and from lienholders and noteholders; correspondence and memoranda to and from trustees of deeds of trust; lender's instructions for construction loans and/or construction and permanent loans; disbursements from settlement; deed of trust releases; title insurance binders and policies; and other items connected therewith; which were prepared for, in preparation of, in furtherance of, and in discharge of Andresen's settlements and conveyances of those lots which were and are the subject of the security of the State National D/T and the Madison D/T (copies of which are attached hereto and made a part hereof as Exhibits #7 and #9). Your affiants reasonably conclude that these books, records, documents, papers, memoranda and correspondence last mentioned, do indicate

that Peter Andresen, as settlement attorney for the last mentioned lots, did and does have actual knowledge of the status and amounts oweing on the notes secured by the State National D/T and Madison D/T, before, during and after the aforementioned settlements of 13T, and which evidence, when taken together with other evidence previously outlined does indicate and will show the elements of fraudulent intent and knowledge in the previously mentioned four false pretenses crimes concerning 13T.

WHEREFORE, your affiants further pray that the search and seizure warrant be issued authorizing them, together with the necessary assistance, to enter the captioned premises and to search all desks, cabinets, closets, safes and other items and places within the captioned premises, where the following items may be concealed that pertain to the sale and conveyance of the last mentioned lots that are the subject of the State National D/T and Madison D/T.

12. Any and all books, records, documents, papers, memoranda, and correspondence, which are, include and pertain to, title notes, title abstracts, and title rundowns; lien pay-off figures and amounts to and from leinholders and noteholders; correspondence and memoranda to and from trustees of deeds of trust; lender's instructions for construction loans and/or construction and permanent loans; disbursements from settlement; deed of trust releases; title insurance binders and policies; and other items connected therewith; which were prepared for, in preparation of, in furtherance of, and in discharge of Peter Andresen's settlements and conveyances of those lots which were and are the subject of the State National D/T and the Madison D/T (copies of which are attached hereto and made a part hereof as Exhibits #6 and #9).

And respectfully request that the attached Search Warrant issue forthwith.

/s/ Joseph L. Lawrence,	/s/ Austin A. Moyer,
Joseph L. Lawrence, Affiant Special Investigator; Bi-County Major Frauds Unit of the Montgomery County and Prince George's County State's Attorneys' Offices	Austin A. Moyer, Affiant Special Investigator; Bi-County Major Frauds Unit of the Montgomery County and Prince George's County State's Attorneys' Offices

Sworn to before me, and subscribed in my presence this 30th day of October, 1972.

/s/ signature illegible
Judge of the Sixth Judicial Circuit
Montgomery County, Maryland

[dated October 30, 1972]

EXCERPTS FROM SEARCH WARRANT

STATE OF MARYLAND

vs

THE PREMISES KNOWN AS MOUNT VERNON DEVELOPMENT CORPORATION, A PARTICULAR BUILDING CONTAINING A NUMBER OF VARIOUS OFFICES KNOWN AS 3514 PLYERS MILL ROAD, WITH NUMERALS 3514 SHOWN TO THE LEFT OF THE MAIN ENTRANCE WAY OF A TWO STORY, WHITE MASONARY BUILDING AND A PARTICULAR ONE ROOM OFFICE WITHIN SAID OFFICE BUILDING LOCATED ON THE BASEMENT FLOOR WITH FIVE STEPS LEADING DOWN TO AN UNMARKED BLACK DOOR, SAME BEING THE ONLY ENTRANCE FACING THE REAR OF SAID OFFICE BUILDING ENCLOSED BY A WROUGHT IRON RAILING, ALL OF WHICH IS LOCATED IN KENSINGTON, MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND
MONTGOMERY COUNTY:

TO: Kenneth W. Watkins, Superintendant of the Department of Police, Montgomery County, Maryland, or any other person authorized or whose assistant is requested or is needed. Greetings:

Whereas an affidavit having been made before me by Special Investigators Austin A. Moyer and Joseph L. Lawrence of the Bi-County Major Frauds Unit of the Montgomery County and Prince George's County State's Attorneys' Offices, that they have probable cause to believe that on the premises known as Mount Vernon Development Corporation, a particular building containing a number of various offices known as 3514 Plyers Mill Road, with

numerals 3514 shown to the left of the main entrance way of a two story, white masonary building and a particular one room office within said office building located on the basement floor with five steps leading down to an unmarked black door, same being the only entrance facing the rear of said office building enclosed by a wrought iron railing, all of which is located in Kensington, Montgomery County, Maryland there are now concealed said premises the following items pertaining to sale, purchase, settlement, and conveyance of lot 13, Block T, Potomac Woods subdivision, Montgomery County, Maryland:

* * *

(The balance of this warrant is identical to the Search Warrant pertaining to 3700 Decatur Avenue)

[dated October 30, 1972]
STATE OF MARYLAND

vs

THE PREMISES KNOWN AS MOUNT VERNON DEVELOPMENT CORPORATION, A PARTICULAR BUILDING CONTAINING A NUMBER OF VARIOUS OFFICES KNOWN AS 3514 PLYERS MILL ROAD, WITH NUMERALS 3514 SHOWN TO THE LEFT OF THE MAIN ENTRANCE WAY OF A TWO STORY, WHITE MASONARY BUILDING AND A PARTICULAR ONE ROOM OFFICE WITHIN SAID OFFICE BUILDING LOCATED ON THE BASEMENT FLOOR WITH FIVE STEPS LEADING DOWN TO AN UNMARKED BLACK DOOR, SAME BEING THE ONLY ENTRANCE FACING THE REAR OF SAID OFFICE BUILDING ENCLOSED BY A WROUGHT IRON RAILING, ALL OF WHICH IS LOCATED IN KENSINGTON, MONTGOMERY COUNTY, MARYLAND

EXCERPTS FROM APPLICATION AND AFFIDAVIT FOR A SEARCH WARRANT

TO: The Honorable Judges of the Sixth Judicial Circuit Court of Maryland

Application is herewith made for a Search and Seizure Warrant in that there is probable cause to believe that the laws relating to False Pretense, as defined in Article 27, Section 140 of the Annotated Code of Maryland, 1957 Edition as amended and revised are being violated upon the following premises known as Mount Vernon Development Corporation, a particular building containing a number of various offices known as 3514 Plyers Mill Road, with numerials 3514 shown to the left of the main entrance way of a two story, white masonary building and a particular one room office within said office building located on the basement floor with five steps leading down to an unmarked black door, same being the only entrance facing the rear of said office building enclosed by a wrought iron railing, all of which is located in Kensington, Montgomery County, Maryland.

* * *

(This portion of the application is identical to that pertaining to 3700 Decatur Avenue)

* * *

Furthermore, your affiants relate that on or about September 26, 1972 S/I Moyer had occassioned to be present in the captioned premises at 3514 Plyer's Mill Road, Kensington, Maryland and there observed Charles G. Bieber seated at the second desk from the entrance and from the conversation overhead, he apparently was conducting business over the telephone. S/I Moyer thereupon conversed with Charles G. Bieber on and about the premises

and he related that the premises were being used as his business location. Charles G. Bieber appears as Mount Vernon Development Corporations' signatory for the sales contract for 13T between Mount Vernon Development Corporation and, purportedly, with Raffaele Antonelli and Rocco Caniglia (a copy attached hereto and made a part hereof as Exhibit #6), signing as purchaser. That sales contract states the address of the purchaser to be "3514 Plyers Mill Road., Kensington, Maryland." Charles G. Bieber also signed the sales contract between Steven Development Corporation (ultimately the property was titled in the name of Young Contracting Company, Inc.) and Mount Vernon Development Corporation, as the representative of Mount Vernon Development Corporation, (a copy attached hereto and made a part hereof as Exhibit #5).

On October 29, 1972 and on a previous occassion S/I Moyer spoke with June Stup who related that until September, 1972 she was employed as a typist in the aforesaid law offices of Peter Andresen. She stated that she was aware that Charles G. Bieber was associated with Mount Vernon Development Corporation, possibly as its treasurer, and that she learned this as a result of, first, inter-office discussions conducted in her presence with reference to Mr. Bieber's position with Mount Vernon Development Corporation; second, as the result of calling Mr. Bieber at phone number 949-1090 on matters relating to Mount Vernon Development Corporation; third, knowledge that phone number 949-1090 is located at 3514 Plyers Mill Road, Kensington, Maryland.

On October 13, 1972 S/I Moyer spoke to Carl Zentz who represented that since September, 1969 until present he has been employed by Peter Andresen as title searcher,

and more recently, as supervisor of all title searchers employed by Peter Andresen, and that he is intimately familiar with the title notes, title abstracts, and title rundowns prepared for Peter Andresen, and that they are normally and typically kept in Peter Andresen's aforesaid law offices and also in the aforesaid 3514 Plyer's Mill Road, Kensington, Maryland.

* * *

(The balance of this affidavit is identical to that pertaining to 3700 Decatur Avenue).

REPORT AND RETURN

I received the attached search warrant on the 30th day of October, 1972 and have executed it as follows:

On the 31st day of October, 1972, at 11:00 o'clock A.M. I searched the premises described in the warrant.

The following is an inventory of property taken pursuant to the warrant:

1. File labeled "Antonelli to Mount Vernon to Young Contracting Company 72-242" containing settlement sheets, deeds of trust, correspondence, and other paraphernalia concerning settlement of lot 13, block T, Potomac Woods.

2. Stock certificate for Charles Holding Corporation.

3. Stock certificate for Revis Engineering Corporation.

4. File labeled "Clark-King to Holtzclaw 70-307 7(t) P.W." containing settlement sheets, deeds of trust, correspondence and other paraphernalia concerning settlement of lot 7, block T, Potomac Woods.

5. File labeled "Standard to Stonestreet J.V. 70-305" containing settlement sheets, title insurance binders and other paraphernalia concerning settlement of lots 1 and 2, block 1, Rockville, Park.

6. File labeled "Title Co. Correspondence" containing correspondence of title companies.

7. File labeled "Clark-King to Antonelli 69-351 13(t)" containing settlement sheets, correspondence, and other paraphernalia concerning settlement of 13T.

8. Deed of trust filed at Liber 4210, folio 847 from

Clark-King Construction Company, Inc. to F.O. Day, Inc.

9. File labeled "James A. Federline Inc. to Clark-King Construction Co. 72-135" containing deed of trust, correspondence, settlement sheets and other settlement paraphernalia.

10. Handwritten note from Peter Andresen to F.O. Day Co., Inc. dated September 26, 1972.

11. Letter from Mary A. Garner to Revis Engineering Corporation dated September 27, 1972.

12. Letter from E. Harold Patterson to Peter Andresen, Esquire dated October 13, 1972.

13. File labeled "Equitable to Clark-King (Ground Trust) 67-354" containing deed of trust settlement sheets, and other settlement paraphernalia.

14. File labeled "Clark-King to Chepuras (2 (11) MCA PK) 71-409" containing settlement sheets correspondence, and other settlement paraphernalia.

15. File labeled "Clark-King to Lyons 70-166" containing settlement sheets, insurance binders, and other settlement paraphernalia.

16. File labeled "Enterprise to Clark-King 69-328 6-8 (T) P.W." containing settlement sheets, insurance binders, and other settlement paraphernalia.

17. File labeled "Federline to Clark-King 70-180" containing "Deed of Trust," deed of trust note, and other settlement paraphernalia.

18. File labeled "Pinehurst to Clark-King 71-454" con-

taining deed of trust, settlement sheet and other settlement paraphernalia.

19. File labeled "Pinehurst to Clark-King 70-129" containing settlement sheet, deed of trust release and other settlement paraphernalia.

20. Ledger sheet showing $2,000.00 balance.

21. File labeled "Clark-King to Clark 67-311" containing settlement sheets, contract, correspondence, and other settlement paraphernalia.

22. Check stubs from and including 7616 to 7859.

23. Three (3) Columnar Pads showing various figures.

24. Grantor list of Clark Construction Company, Inc.

25. Title Abstracts of Potomac Woods subdivision.

26. Letter from Dores Chepuras dated October 6, 1972.

27. File labeled "State N B to Clark 68-281" containing Deed of trust correspondence, and other settlement paraphernalia.

28. File marked "Elic to Clark-King 69-128, 11, 12, 13(s)" containing subordination agreement correspondence and other settlement paraphernalia.

29. File labeled "Pinehurst to Clark-King, 71-454" containing settlement sheets, title binder and other settlement paraphernalia.

This inventory was made in the presence of Peter C. Andresen and Lori Hall. I swear that this inventory is a true and detailed account of all the property taken by me

on the warrant.

/s/ John * * * /s/ Joseph L. Lawrence

Subscribed and sworn to and returned before me this 3rd day of November, 1972.

/s/ DAVID L. CAHOON
CIRCUIT COURT JUDGE
FOR MONTGOMERY
COUNTY, MARYLAND

REPORT AND RETURN

I received the attached search warrant on the 30th day of October, 1972 and have executed it as follows:

On the 31st day of October, 1972, at 11:00 o'clock A.M. I searched the premises described in the warrant.

The following is an inventory of property taken pursuant to the warrant:

1. Blue "Phone-O-Grams Book" with a 7-13 phone call directed to "Charlie" from Mrs. Antonelli.

2. Blue Long Distance Telephone Log with "Frank Marsalek 293-4190" as one of the numbers listed.

3. "Promissory Note", attached to paper by clip Pete-from-Charlie.

4. Three (3) imprints of Corporate Seals "Second Chance", "Guarantee Maintenance" and "Associated Mortgage".

5. Desk Calendars from October back through April

1972, October 6th notation "Nat. Bank of Washington".

6. Folder captioned "Jones View – Lots 6 & 10 – Block B" containing note from trustees that Guaranteed Maintenance purchased same.

7. Folder captioned "Person VS Sivers and Panda" containing a letter dated July 17, 1972.

8. Folder captioned "31 Acres (Manassas)" containing a letter dated June 22, 1972, to Bieber-Canadian.

9. Brown spiral note book "Chas. Bieber" containing contracts "Revis".

10. Folder captioned "7804 Garland Ave" containing letter dated August 23, 1972 to Bieber "Chas Holding Corp".

11. Folder captioned "Glen Ecco Heights" containing a message directed to Mr. Sampson and Charlie.

12. Folder captioned "Catalogs" containing contract for Mount Vernon Development Corporation.

13. Folder captioned "Misc. Bills - Beach" containing bill for Revis dated 9/28/72.

14. Three (3) Checks Gude Industrial Development Corporation XXX All aforementioned items are contained in Green folder marked "A".

15. Folder captioned "Don Wolf" containing a counter check drawn on Revis prior to September 26, 1972.

16. Folder captioned "Unpd bills A-Z Mass. Ave." containing bills for Revis and Canadian, prior to September

26, 1972.

17. Folder captioned "unpd bills A-Z Mass Ave." containing bills for Revis and Canadian, prior to September 26, 1972.

18. Folder captioned "unpd bills A-Z Alabama Ave S.E." containing bills for Canadian prior to September 26, 1972.

19. Folder captioned "Unpd bills Sea Isl." containing bills for Canadian prior to September 26, 1972.

20. Folder captioned "Unpd bills A-Z Williams" containing bills prior to September 26, 1972.

21. Folder captioned "Unpd bills - delivery Tickets Kemp Mill" containing bills for Canadian prior to September 26, 1972.

22. Folder captioned "Unpd bills Wheaton Lane A-Z" containing unpd bills for Canadian prior to September 26, 1972.

23. Folder captioned "Unpd bills 1104 Congress St. SE containing bills for Canadian prior to September 26, 1972.

24. Folder captioned "Unpd bills McComas Properties" containing bills for Revis prior to September 26, 1972.

25. Folder captioned "Unpd bills A-Z Gude Ind. Dev." containing bill for Gude prior to September 26, 1972.

26. Folder captioned "Unpd bills Gosport Ct" containing bills for Canadian Prior to September 26, 1972.

27. Folder captioned "Unpd bills Franklin Dr." con-

taining bills for Canadian prior to September 26, 1972.

28. Folder captioned "15Th St" containing bills for Canadian prior to September 26, 1972.

29. Envelope containing tax bills for Revis dated prior to September 26, 1972.

30. A quantity of Devlin Lumber bills for Canadian prior to September 26, 1972.

31. Resolution Corp. Account Madison Apple Grove with Sivers, Sampson and Breen.

32. Two letters to Apple Grove from Canadian Re: Loan prior to September 26, 1972.

33. Revis Engineering counter check prior to September 26, 1972.

34. Letter from Security National Bank to Revis note payment due prior to September 26, 1972.

35. Quantity of bills from Charles County to Jones View prior to September 26, 1972.

36. Quantity of Tax bills Charles County to Jones View prior to September 26, 1972.

37. Quantity of checks Canadian prior to September 27, 1972 State National Bank (all the above items lined in folder marked 30 thru 37).

All the above items taken from the third desk in office and are contained in green file folder "B".

38. Folder file captioned "Unpd bills Westchester Estates" containing bills for Revis prior to September 26, 1972.

39. File folder captioned "Unpd bills General Acct." containing bills for Canadian prior to September 26, 1972.

40. One brown book captioned "Westchester Estate acct. Payable" prior to September 26, 1972.

All the above items taken from the third desk and maintained in their own state

41. Folder captioned "Apple Grove Development Corp." containing papers dated prior to September 26, 1972.

42. Folder captioned "South Georgetown Corp." containing Instructions on how to form a corporation.

43. Folder captioned "Mount Vernon Development Corporation" with items prior to September 26, 1972.

All the above taken from 1st desk, packaged by rubber band and Marked "C".

44. Folder captioned "Potomac Woods A" containing: original Deeds of Trust, subordination agreement, releases, title rundowns, work sheets, title Insurance policies and waivers of liens, settlement sheets and associated papers all involving Clark-King Construction Co.

45. Folder captioned "Potomac Woods B" containing initially the same material as above.

46. Folder captioned "Mel Clark" containing accounting sheet listing Equitable-Lumsden etc. Deed of trust notes, account sheets due, and owing, correspondence of Clark King and Andresen, and associated papers.

47. Folder captioned "Westchester Estates General" "Stonco" containing title work rundown sheets, deeds of

easement, agreements, deeds and associated papers.

48. Folder captioned "Westchester Estates General" "Revis Engineering Corporation" containing title reports, deeds, subordination agreements, easement reports, etc.

49. Folder captioned "Apple Grove General" containing title rundown sheets, deeds of easements, deeds of trusts, releases, mechanics Liens, title orders and associated papers.

50. Folder captioned "McAuley Park General" containing title reports, plat, and associated papers.

All the above removed from four drawer file, top drawer located in the rear of premises with large desk against same. All above enclosed in green case marked "D".

51. Folder captioned "Potomac Woods General" containing title rundowns, work sheets, deeds of easement, declaration of covenments, abstract reports, deeds of trust, title binders.

52. a) folder captioned "Gruver Grantor, D.C." containing Title report.

b) folder captioned "Grantor Lists A-M Prince George's Co." containing title rundown reports in names A thru M.

c) folder captioned "Grantor Lists N-Z Prince George's Co." containing title rundown reports in names N thru Z.

XXX These following all contain abstract work and papers of Carl Zentz.

d) folder captioned "Kendale General"

e) folder captioned "Covenants"
f) " " "Willowbrook General"
g) " " "Willowbrook General New"
h) " " "General File supplies"
i) " " "Title Searching Procedure"
j) " " "Bedfordshire General"
k) " " "Chandon Woods General"
l) " " "College Gardens - General file"
m) " " "Congressional Country Club Gen"
n) " " "Damazo corp. Judgements, home etc"
o) " " "Foxlee Manor general"
p) " " "Gredinger Subdivision"
q) " " "Hollywood Park General"
r) " " "Jones View General"
s) " " "Kemp Mill Estates General"
t) " " "Montevideo Count General"
u) " " "Orchard Estates General"
v) " " "Potomac Common-Gen. file"
w) " " "Potomac Village General"
x) " " "Rosedale Estates General"
y) " " "Snowden Oaks General"

All from a four drawer cabinet in the rear of the premises.

This inventory was made in the presence of H. Douglas Rodier and Pvt. G.M. Costello MCPD I swear that this

inventory is a true and detailed account of all the property taken by me on the warrant.

_____

Subscribed and sworn to and returned before me this _____ day of _____, 1972.

_____

CIRCUIT COURT JUDGE
FOR MONTGOMERY
COUNTY, MARYLAND

_____

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	)	
	)	
v.	)	No.
	)	
PETER C. ANDRESEN	)	

MOTION TO SUPPRESS EVIDENCE

Comes now the defendant, Peter C. Andresen, by his attorney, David B. Lamb, and respectfully moves this Honorable Court to suppress any and all evidence seized by members of the Bi-County Fraud Unit and/or Montgomery County Police Department from the premises known as 3700 Decatur Street and 3514 Plyers Mill Road, Montgomery County, Maryland on October 31, 1972.

As grounds for this motion defendant states as follows:

1. The search warrants for the aforementioned premises directed seizure of papers and files which were

communicative and/or testimonial in nature. Such seizure was in violation of the defendant's 4th and 5th Amendment Constitutional rights.

2. The officers and/or agents of the Bi-County Fraud Unit exceeded the scope of the search warrant in that substantial items were confiscated which did not relate to lot 13-T which was the subject of the warrant.

WHEREFORE, defendant respectfully requests that this Court suppress all evidence seized.

Respectfully submitted,

LAMB, EASTMAN & KEATS

by _____

DAVID B. LAMB
1742 N Street, N.W.
Washington, D.C. 20036
785-4822

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND)
)
v.) No.
)
PETER C. ANDRESEN)

MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS EVIDENCE

I. ALL EVIDENCE SEIZED SHOULD BE SUPPRESSED BECAUSE THE SEIZURE VIOLATES DEFENDANT'S 5th AMENDMENT RIGHTS, THUS RENDERING THE SEIZURE UNREASONABLE WITHIN THE 4th AMENDMENT.

The close interrelationship between the 4th and 5th Amendments with regard to searches and seizures has long been recognized by the Supreme Court. In *Boyd v. U.S.*, 116 U.S. 616, 6 S.Ct. 524 (1886), the court fully discussed this relationship and declared itself

> "unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself" p. 633

In *Boyd* the government obtained a court order to require defendant to produce in court his private books for purposes of review for the Internal Revenue Service. The court held that this was an unconstitutional authorization of authority, because defendant's books were the subject of mere evidence. Although the "mere evidence" rule of

Boyd was later reversed in *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1647 (1967), the thread of the interrelationship issue of the 4th and 5th Amendments remained good law and continued to be woven in later decisions.

The issue again was raised in *Gouled v. U.S.*, 255 U.S. 298, 41 S.Ct. 261 (1921). Again, *Gouled* was decided before *Hayden*. In *Gouled* a search warrant was issued, but the court held that even with a search warrant the books and papers of defendant were mere evidence of a crime and could not be constitutionally searched and seized in owner's home or office. But, when the court addressed itself to the issue of the possibility of admitting the private papers obtained into evidence, it had this to say:

> "It is the right and duty of the government to secure evidence of a crime, even from the accused himself, *if this can be done without violating his Constitutional rights*" p. 301 (emphasis added)

> "The admission of a paper so obtained in evidence against and over the objection of the owner when indicted for crime, compels him to be a witness against himself, in violation of the 5th Amendment." p. 306.

In *Marion v. U.S.*, 275 U.S. 192, 48 S.Ct. 74 (1927) the police had obtained a warrant for liquor but, during the course of their search, they discovered books and records concerning the operation of an illegal liquor enterprise. In holding the seizure illegal, the Supreme Court said:

> "The requirement that warrants shall particularly describe the things to be seized makes general

> searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." p. 196

Although *Hayden* establishes the "mere evidence" rule as being constitutionally permissive, it still left the intertwining issue open. The court stated that under *Boyd* and *Gould*, the evidence was inadmissible as violative of 4th Amendment rights. Therefore, the 5th Amendment problem was never met head on. The issue again was raised in this case, but the court found that the items of clothing introduced into evidence were not "testimonial" or "communicative" in nature under *Schmerber v. California*, 384 U.S. 757. But, if the items did pass the *Schmerber* test (which the court on prior occasions has so labeled as to books and papers as noted above) then the question as to their introduction whereby forcing defendant to become a witness against himself must be answered.

Justice Douglas in his dissent, addresses the issue head on. p. 319

> "Our question is whether the government, though armed with a proper search warrant or though making a search incident to an arrest, may seize, and use at the trial, testimonial evidence, whether it would otherwise be barred by the 5th Amendment or would be free from such strictures. The teaching of *Boyd* is that such evidence, though seized pursuant to a lawful search, is inadmissible."

Hayden did not involve a search warrant and therefor at no point was *Marion* discussed by the court. Moreover, *Marion* was cited with approval in *Berger v. New York*, 388 U.S. 4158, 87 S.Ct. 1973, decided *after Hayden*, thus making it quite clear, that the mere evidence rule applies to the authorizational basis of the search warrant, and is not a ticket for a general search which has been abhorred since colonial days and barred by both the Federal and State Constitutions.

As to date there are only two lower court decisions addressing themselves to this issue. In both cases, *cert* was denied by the Supreme Court.

The first case is a decision by the United States Court of Appeals, Second Circuit. In *U.S. v. Bennett*, 409 F.2d 888 (1969) as the result of a search incident to an arrest, the police seized a letter written to defendant as mere evidence of a crime. The Court of Appeals kept the traditional label of a letter as being "testimonial" and affirmed its admittance as being mere evidence. However, the letter was not written by the defendant, but to him, thus in itself not being truely testimonial.

Hill v. Philpott, 445 F.2d 144 (7th Cir., 1971) held that where production of taxpayer's personal books and records would have *properly been refused* on the basis of a 5th Amendment privilege against self-incrimination if they had been sought by a subpoena in a summons, the fact that they were seized pursuant to a valid search warrant did *not* preclude the taxpayer-defendant from claiming a violation of his 5th Amendment rights. The court states:

> "In overruling *Gouled* as to its 4th Amendment teachings, we do not believe that the court intended

to in any way diminish the 5th Amendment characteristics which might attach to certain items of property such as personal books and records. Indeed, the 5th Amendment holding of *Gouled* which concluded that the documents there at issue were protected appears still to be applicable, as that aspect of the case was not mentioned in the *Warden* opinion."

II. THE SEIZURE EXCEEDED THE SCOPE OF THE WARRANT.

While effecting the search the agents of the Bi-County Fraud Unit seized numerous items of evidence which were not mentioned in the warrant and accordingly they should be suppressed by this Court. The most recent case dealing with the scope of a seizure pursuant to a warrant is *Hughes v. State,* 287 A.2d 299 (1972) wherein the court held that the items which the police may reasonably seize under a constitutionally valid warrant and search are not confined to those specifically designated on the warrant if a nexus exists between the item seized and criminal behavior. Such nexus is automatically provided in the case of fruits and instrumentalities of a crime and contraband, but may exist also as to mere evidence. Citing *Warden v. Hayden supra, Anglin v. State,* 227 A.2d 364 (1967), *Crawford v. State,* 267 A.2d 317 (1970). In the instant case the items seized were not instrumentalities or proceeds of a crime nor were the agents in a position to know whether the items constituted evidence of other criminal behavior.

Respectfully submitted,

LAMB, EASTMAN & KEATS
by DAVID B. LAMB
1742 N Street, N.W. Washington,
D.C. 20036 – 785-4822

[filed April 19, 1973]

STATE OF MARYLAND,	)	No. 3100, 3103 Crims.
Plaintiff,	)	In the Circuit Court
vs	)	for Frederick County
PETER CHRISTIAN ANDRESEN,	)	
Defendant.	)	

MEMORANDUM AND ORDER

In the above-entitled cases, Peter C. Andresen, Esq. (Andresen) has been indicted for the crimes of false pretense, larceny after trust, fraudulent misappropriation by a fiduciary, embezzlement, forgery, uttering, failure to pay tax and recordation charge, and misrepresentation of taxable consideration.

These charges stem from the activities of the defendant while conducting his practice of law in connection with certain acts involving real estate transactions, particularly the settlement of Lot 13, Block T, Potomac Woods Subdivision, Montgomery County, Maryland.

Prior to defendant's indictment, two search warrants were issued, one to search the complex of offices and stores known as 3700 Decatur Avenue, the law offices of Peter Christian Andresen, and the other to search various offices at 3514 Plyers Mill Road, both places located in Kensington, Montgomery County, Maryland. The Plyers Mill Road address was the office of Mt. Vernon Development Corporation, a corporation which is allegedly owned and operated by the defendant.

It is alleged in the application and affidavit that the probable cause for searching the above premises was that

certain letters, books, documents, papers, et cetera, were concealed there pertaining to the sale, purchase, settlement and conveyance of Lot 13, Block T, Potomac Woods Subdivision, Montgomery County, Maryland, which would show or tend to show a fraudulent intent and/or knowledge as elements in the crime of false pretense, and further provide for the seizure of other items that may be the fruits, instrumentalities and evidence of other crimes, at the time of the search unknown. As a result of the two searches, numerous records, papers and documents, et cetera, were obtained pertaining to Lot 13-T and numerous documents, papers, et cetera, which do not pertain to Lot 13-T but are evidence, according to the State, which would tend to prove plan, design or scheme. Some of that evidence obtained as a result of the present search warrant which did not pertain to Lot 13-T was used for the indictment in Cases Nos. 3101 and 3102 are not now before the Court.

The defendant filed a motion to suppress the evidence seized from the above-mentioned premises, alleging:

(1) "The search of the aforementioned premises directed seizure of papers and files which are communicative and/or testimonial in nature. Such seizure was in violation of defendant's Fourth and Fifth Amendments Constitutional rights.

(2) "The officers and/or agents of the Bi-County Fraud Unit exceeded the scope of the search warrant in that substantial items were confiscated which did not relate to Lot 13-T, which was the subject of the warrant."

Lengthy hearings were held by the Court on the motion to suppress the evidence, at which time arguments of

counsel were heard and considered. The arguments of the defendant will be considered in the order in which they were made.

United States Constitution,
Fourth Amendment

The Fourth Amendment to the United States Constitution provides, "The right of the people to be secured in their persons, houses, papers and effects against unreasonable search and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The defendant's contention is that the evidence obtained as a result of the searches was in violation of the Fourth Amendment to the United States Constitution, for that there was not probable cause to confiscate those items which did not relate to Lot 13-T, which was the main subject of the application and affidavit for both search warrants. The United States Supreme Court, prior to the case of *Warden v. Hayden*, 387 U.S. 294, had made a distinction between instrumentalities of the alleged crime as distinguished from mere evidence which might aid in a particular apprehension or conviction. The Hayden case, however, overruled this distinction and held that the Fourth Amendment of the United States Constitution was not violated by the seizure of "mere evidence" if there was proven to be a nexus between the items seized and the criminal behavior. This case held that "mere evidence" may be seized if probable cause can be established that the evidence will aid in the particular apprehension or conviction. *Hughes v. State*, 14 Md. App. 497, supports this proposi-

tion, provided the warrant does not authorize a "general rummage through all the materials," in the place to be searched.

As a result of the hearing to suppress the evidence, the Court finds that there was not a nexus shown as to those items on the report and return of both search warrants, with the exception of items marked for the purpose of the suppression hearing as Defendant's Exhibits 10, 11, 12, 13 and 14 seized from the Plyers Mill Road premises; and items marked Defendant's Exhibits 15, 18, 35, 23, 16, 20, 24, 28, 29, 31, 32, 17, 21, 30, 19, 33 and 34 seized from the Decatur Avenue premises. These items are hereafter referred to as excepted items. All the other items have been returned to the defendant. Therefore only the excepted items will be further considered for the purpose of memorandum and order.

As to the excepted items, it appears to the Court that the State has conclusively shown a nexus between them and the alleged criminal behavior. The warrant did not authorize a "general rummage through all the materials" in the defendant's offices, and the warrant was not a general one. *Hughes, supra.*

Evidence Out of Date

Defendant contends that much of the evidence seized by the search warrant was out of date, in that it covered in some instances several years prior to the alleged offenses. The State contends that these items of evidence tend to show a plan, design or scheme by the defendant to perpetrate the alleged offenses and therefore should not be suppressed. The Court finds that the excepted items

are not too remote in time and that they may tend to aid in conviction by showing a plan, design or scheme and the intent of the defendant. *Gilchrist v. State*, 2 Md. App. 635.

Restitution

These cases involve the settlement of real estate transactions by the defendant, in which he allegedly gave certifications of clear titles when in fact he knew that there were outstanding encumbrances in the form of deeds of trust. Defendant's argument is that although there may have been outstanding encumbrances in the form of deeds of trust on certain parcels of real estate when they were settled, there had been releases filed on those particular parcels of land on the deeds of trust prior to the indictment. Assuming that the defendant did subsequently arrange to release the encumbrances on the real estate transaction subsequent to the closings, it would be no defense to the crimes charged against the defendant. *Delcher v. State*, 161 Md. 475 at 487. Furthermore, the evidence shows that one deed of trust involving Lot 13-T has never been paid.

Lack of Probable Cause

The determination of the existence of probable cause must be confined solely to the affidavit itself and evidence outside the affidavit, no matter by whom produced or how, is not relevant to the inquiry of probable cause. *Grimm v. State*, 7 Md. App. 491 at page 493. The defendant contends that there was no probable cause to search the premises at 3700 Decatur Avenue. The affidavit conclusively shows that George Young and Audrey E. Young were present in the law offices of the defendant

or on about July 18, 1972 where settlement was held for the purchase of Lot 13, Block T, Section 10 of the Potomac Woods Subdivision in Montgomery County, Maryland. As a consequence to that settlement, Lot 13-T was conveyed to Young Contracting Company and the purchasers were told by the defendant that the title was clear, when in fact it was not. As a result of this transaction, it seems to the Court that it is quite clear that evidence involving this settlement and others alleged in the affidavit would be found on these premises. The affidavits are lengthy ones, obviously done with much care, and supported by numerous exhibits, all of which establishes beyond any doubt, sufficient probable cause for the issuance of the warrants.

Fifth Amendment to the United States Constitution

The thrust of defendant's argument here is that he has the right of privacy in and over his person, house, papers and effects, on the ground that to permit those items to be introduced into evidence would be a prohibition against compulsory self-incrimination.

On this point there seems to be no Maryland law, and in two cases before the Federal system, the Courts took opposite views and in both cases certiorari was denied by the United States Supreme Court.

In *United States v. Blank*, 459 F2d. 2d 383 [Sixth Circuit, 1972], the United States Court made a distinction between those records sought by subpoena and records sought by search warrant. They held that there was a valid and important distinction. The subpoena compels

the person receiving it by his own response to identify the document and deliver as the one described in the subpoena; the search warrant involves no such element of compulsion upon an actual or potential defendant. In the *Hill v. Philpott* case, 445 Fed. 2d 145, Second Circuit, the Court held that the subpoena-search warrant distinction was "more shadow than substance," and held that the seizure of personal papers of the defendant was in violation of the Fifth Amendment. The Blank case in effect rejected the holdings in the Philpott case, and seems to this Court to be the better law. 8J, Wigmore, *Evidence*, Sec. 2264 [McNaughton, Rev., 1961]. It is conceded in this case that evidence produced by the defendant in response to a subpoena *duces tecum* would be in violation of the Fifth Amendment, but it is argued that evidence received as a result of the search warrant compels the defendant to do nothing. Relying on the Blank case and Wigmore on *Evidence*, this Court holds that the seizure of the excepted items by search warrant does not violate the Fifth Amendment to the United States Constitution.

Plain View Doctrine

One of the excepted items above, Number 19, obtained from the law offices of the defendant, is admitted by the State not to be an instrumentality of the alleged crimes provided in the affidavit and is not "mere evidence" to aid in the apprehension or conviction of defendant as to those alleged charges provided in either affidavit. The State's argument is that this evidence should not be suppressed because it was obtained under "the Plain View Doctrine." This item was found in a file in the law offices of the defendant while the search was being conducted. The testimony of one of the officers conducting

the search was to the effect that he discovered it and had a suspicion that it was evidence of another crime. There is an excellent analysis of the "Plain View Doctrine" in *Brown v. State*, 15 Md. App. 584.

Judge Moylan in the Brown case points out that in the doctrine as to conditions precedent to its application, first, there must be a justifiable prior intrusion; and, second, that the discovery be inadvertent. One of the four situations illustrated as a prior valid intrusion is "the warranted search of a given area for specific objects . . . in the course of [which] . . . the searchers [come across] some other articles of incriminating character." Both the searches in these cases were the result of a warranted search of a given area for specific objects, and therefore satisfy the first requirement. This was not a planned warrantless seizure which the Court prevents by the inadvertent requirement. There was ample reason to suspect in this case that the defendant had records of the alleged illegal transactions in his law offices, and seizure of this particular item did not require a further intrusion; and the discovery of the individual items not pertaining to the main subject matter of the affidavit was inadvertent. The requirements of the "Plain View Doctrine" are therefore met, and this item will not be suppressed.

For these reasons it is, this *19th* day of April, 1973, ORDERED that the motion to suppress the evidence be granted to all those items on the return and report with the exceptions of items marked for the purpose of the suppression hearing as Defendant's Exhibits 10, 11, 12, 13 and 14 seized from the Plyers Mill Road premises; and items marked for the purpose of the suppression hearing

as Defendant's Exhibits 15, 18, 35, 23, 16, 20, 24, 28, 29, 31, 32, 17, 21, 30, 19, 33 and 34 seized from the Decatur Avenue premises; and as to the items listed the motion is hereby denied.

Samuel W. Barrick
Judge

(Filed April 19, 1973)

TRUE COPY TEST:
Ellis C. Wachter
Clerk

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
ON MOTIONS

AUSTIN L. MOYER

* * * * *

DIRECT EXAMINATION

BY MR. LAMB:

* * * * *

[34] Q. When was your last interview with Mr. Hecht?
A. As I stated before, Mr. Lamb, it was prior to the affidavit and after Mr. Young's interview.

Q. Can your notes refresh your – A. I don't have my interview with Mr. Hecht with me at this time.

Q. Well, is it possible that it happened in September, or August? A. I don't believe so. I think it was after Mr. Young's.

Q. But you don't have any idea what month it was in? A. Not at this time.

Q. With respect to the interview with Mr. Hecht, you received information that there was a lien applying to Lot 13T, is that correct – that is the information you gave in your affidavit? A. Yes, sir.

Q. And Mr. Hecht informed you that he had been receiving payments from Mr. Andresen for the benefit of
[35] Mr. Melvin C. Clark? A. Yes.

Q. And did he also tell you when you talked to him that he had a check that was noted as to Lot 13T, indicating money to pay off the release of the lot?

MR. WERNER: I object, because this is not listed in this affidavit – he's going behind the affidavit.

MR. LAMB: Your Honor, I think this is definitely pertinent as to whether there was in fact probable cause to believe a fraud had been committed. The question is

whether any false pretense or fraud had been perpetrated when there is probable cause to believe that it was perpetrated. I submit that the basic allegations in the affidavit center themselves around the liens of record as to Lot 13, liens being held by Madison National Bank and by State National, and if in fact they were not liens of record at that time and the agent knew about it or knew that payment had been made, I submit that that is a misrepresentation in the affidavit which goes to the validity of the affidavit.

MR. WERNER: May I respond to that, Your Honor?

THE COURT: Yes.

MR. WERNER: Your Honor, contained within the exhibits attached to and made part of the affidavit and the search warrant is the deed for Lot 13T. I believe it is Exhibit Number 4. It is dated July 17, 1972 and the recorder's stamp for the Clerk's Office of Montgomery County
[36] is on it, July 19, 1972 – that is the critical date. Now, what happened between October 25th and October 30th when Mr. Moyer went to get the search warrant is not material. The crime was or was not committed when that land went to record with those releases – those trusts paid or not paid – that's the critical time, not October.

MR. LAMB: Your Honor, I submit that Mr. Werner's understanding of the real estate law is incorrect from the standpoint of when the fraud was committed. The mere fact that the deed was going to record –

THE COURT: I think we're getting far afield of the issues before us today. That may or may not be the law, but I don't think that's a question for the magistrate to determine in issuing the search warrant for the Circuit Court judge.

MR. LAMB: Your Honor, I submit that the facts that the Circuit Court judge had to review for a search warrant

–he has to determine whether there is probable cause to believe that some crime has been committed; probable cause to believe that evidence of the crime is located in the property where the search warrant is going to be executed. In determining that, the point in time when a warrant is to be issued, he has to consider the freshness of the facts and the truth of the facts. I submit that if false facts are contained in the affidavit, that that negates a probable cause. If there is no probable cause–

THE COURT: That would have to be known to the person who was issuing the search warrant, would it not?

[37] In other words, the law, as I understand it, is that we do not look beyond the four corners of the affidavit to determine whether or not there was probable cause, and I would like for you to present me a case where you can attack the search warrant on the basis that you're trying to.

MR. LAMB: Your Honor, I'm not trying to offer evidence external to the search warrant, the sheer proof of the truth or falsity of the facts contained therein by extraneous witnesses – I'm not talking about bringing in witnesses that the agent talked to; I'm talking about what was within the personal knowledge of the agent when he swore to the warrant and if he knowingly swore to facts which were incorrect – then I should say that that destroys the warrant, and a judge cannot determine that. If it comes out today that the agent knew in fact as of the date he swore to the warrant, number one, that releases were filed two months preceding that –

THE COURT: I think you're correct on that. You may proceed.

MR. LAMB: This is a search warrant and not an arrest warrant or anything like that, a search warrant incident

to an arrest – we're dealing with a different type of warrant. Now, Agent, when you talked to Mr. Hecht did he relate to you that he had received a check from Mr. Andresen which was applicable to Lot 13T about the 14th of September or thereafter? A. I recall a check; he mentioned a check, yes, sir.

[38] Q. And it related to Lot 13T, is that correct?

A. It related to Lot 13T; the date I can't remember.

Q. It was September, wasn't it? A. I don't know.

Q. Well, it was roughly about the same time that you interviewed the man? A. About that time, yes, sir – about that time.

Q. Did he show you the check? A. I can't remember whether he showed it to me or not at that time.

Q. And he related to you at that time that they were having some kind of a civil problem between Mr. Melvin L. Clark, Mr. Andresen and the bank as to what loans were being paid off by this money, is that correct? A. He related something, but it wasn't quite that.

Q. What did he relate? A. He related–

MR. WERNER: Your Honor, we object – he's going beyond the search warrant and the affidavit. What difference does it make – it isn't in the affidavit.

THE COURT: I'll overrule the objection.

A. He related that it would not go for payment on the note, but that it would be applied to other – other debts owed.

Q. Even though the check specified Lot 13T on it, and

[39] there was a release provided, is that correct? A. Yes, because as you said, there was some litigation which I didn't get involved in.

* * * * *

[42] MR. LAMB: I will ask the witness this question, Your Honor. The false pretense which you say you provide probable cause for in the affidavit, you say occurred in July of 1972? A. I believe.

Q. And not subsequent thereto? A. No.

Q. So there was three months between the date of the false pretense and the date you swore to the facts in the affidavit? A. Yes.

Q. So all the evidence contained here is three months old—all the evidence, within your personal knowledge, is three months old? A. Yes.

* * * * *

[104] THE COURT: Let's take them individually. Do you have any questions about this particular piece of evidence, Mr. Lamb?

MR. LAMB: Yes, Your Honor, I have.

CROSS-EXAMINATION

BY MR. LAMB:

Q. Agent Moyer, this particular piece of evidence at the time you found it, you didn't see that it had any direct relevance to the commission of a crime of false pretense, did you – it was only subsequent to that that you found that out? A. No, I believed it had relevance to the false pretense.

Q. What relevance? A. The fact that 13T was represented to Mr. Young as not having any trusts on it, and it turned out that eventually a State National Bank trust was on it.

Q. Does that document tend to prove one way or the other whether there was or was not false pretense?

[105] A. Not at the time of seizure, no.

Q. So at that time you had no knowledge of its evidentiary value in the proof of false pretense, did you?

A. This particular–

Q. You didn't even know what it was when you first saw it, the day you took it, did you? A. If I saw it, and I don't remember whether I did –

Q. You don't remember whether you saw it the day you seized it? A. I went through the file. There were certain things I seen which was represented to me– this here file tended to be involved with the Potomac Woods project, and that's why I seized it.

Q. So you took the whole file? A. That's right.

Q. And it wasn't until some later time that you saw some possible value, evidentiary value to that particular piece of paper as possible evidence introduceable in a proof of a crime of false pretense? A. Yes.

Q. And on its face it does not indicate a crime of false pretense, does it? A. On its face it indicates to

[106] me now that it is – it could be part of the crime of false pretenses.

Q. That's today, you're making that decision?

A. Yes, that's today.

Q. But not at the time it was seized? A. No.

REDIRECT EXAMINATION

BY MR. WERNER:

Q. One other question, if I may, Mr. Moyer. Knowing what you knew at the time you swore to the affidavit and then executed it, and going in and seeing this document with certain familiar names on it, namely, State National Bank, Lumsden and Antonelli, alongside of 13T and the fact that it was found in files which you thought or which were represented to you might belong to Mr. Andresen, did that in and of itself have some special significance to you in relation to the criminal prosecution?

A. Yes.

Q. What was that? A. That it, it could be used as evidence to explain the false pretense; possibly it might

be an instrumentality indicating a prior trust had not been released, which would be State National Bank, and that would be – indicate the transaction to the Antonellis prior to Mr. Young getting – prior to Mr. Young's transaction.

Q. Was there any special significance to you that it was found in a file that purportedly was Mr. Andresen's?

[107] A. Yes, it would link him up with it.

MR. WERNER: Thank you.

RECROSS-EXAMINATION

BY MR. LAMB:

Q. One further, Agent. All of this that you are relating at this time is opinion that you have now formulated, long after you seized the document, is that correct?

A. I believed at the time I had probable cause. Now–

Q. Officer, answer my question. First of all, you said you didn't even know the document was in the file when you seized it? A. I said I didn't remember, I'm sorry.

Q. You didn't remember, and you don't remember today? A. If it was in the file at that time, I don't remember. I know I looked in the file and there were certain items relating to the transaction that I was looking for, and as a result of that I seized the whole file.

Q. And on the basis of your investigation after – both before and after the seizure, today you are able to give the opinon that you think on the basis of your experience as an investigator that it does have a nexus – that is, today you are giving that opinion? A. Yes, naturally.

Q. But that's not necessarily the opinion you would have had on the day that you seized that piece of paper?

[108] A. Had I specifically picked this paper out and remembered it, it would be my opinion on that day as well as today.

Q. But you didn't even know you had it until some time after you took it? A. I don't remember whether

this was a document I looked at or another piece of paper reflected to me some connection between Lot 13T–I can't remember.

* * * * *

[110] RECROSS-EXAMINATION

BY MR. LAMB:

Q. Again, the testimony you are giving today is on the basis of information which has come to your attention after the seizure of this document, in trying to relate this document to other documents which you seized from Mr. Andresen's office? A. Yes.

Q. So you have reviewed this document together with the documents and files taken from Mr. Andresen's office pursuant to another search warrant, and then have decided that there is a relationship between this and what was found in Mr. Andresen's office? A. I don't quite understand your question, Mr. Lamb.

Q. It is a fact that after you took these files back to

[111] your office, that you reviewed the documents contained in the files and related them to the documents that were taken from Mr. Andresen?

THE COURT: I believe his answer to that question previously had been that he did pick up this file titled, "Potomac Woods," and that in that file he noticed that there were certain papers that would pertain to Lot 13A which of those papers, he took the file on the basis of those. He does not recall – he's answered that three or four times. I believe his testimony is that he doesn't know whether this was the paper or another paper or several papers that you called his attention to were in this file, and on the basis of that he seized it. Is that correct, Mr. Moyer?

THE WITNESS: Yes, sir.

MR. WERNER: The only thing I'm trying to get at is, his opinion today is on the basis of subsequent reviewing of this document in connection with other documents after the seizure, and not before.

THE COURT: I quite frankly don't understand your question. Maybe if you phrase it another way I'll understand it.

MR. WERNER: Yes, Your Honor. Agent, when you seized the file this document came from, you compared this document to other documents that were obtained in execution of the search warrant on Mr. Andresen's office, is that correct? A. And on others. And on–

Q. Plyers Mill Road? A. Yes, sir.

[112] Q. And is it at this time that you decided this did have a distinct bearing on the proof of the false pretense case? A. That particular document I cannot say yes or no, but one of the documents in the file where this document is part of, reflected to me that 13T, Potomac Woods, and attached to the affidavit was an inclosure of the deed of trust involved in Lot 13T.

Q. Where on this document is 13T referred to?

A. "Lot or Parcel 13, Block T, Section 10, Potomac Woods."

Q. And what is – strike that. And you came to find out subsequently to that the recording information of that deed – A. Yes, sir.

Q. –By which Mr. Clark transferred the property out to somebody else; and do you know when that happened?

A. If I can see the affidavit I could tell you.

MR. LAMB: I will withdraw the question. No further questions.

THE COURT: All right. Do you have any other questions, Mr. Werner?

REDIRECT EXAMINATION

BY MR. WERNER:

Q. Mr. Moyer, with respect to what is now Defendant's Exhibit 13, being a yellow legal pad, the first two pages of which are clipped because they apparently came loose, but the last page or the last line of the entry, will you

[113] please read that to the Court. A. "Lot 13"– under "Lot" is Number 13; under "Block" is the letter T; under "Section" is 10 and then there's a number, 69-351, Rafaelle Antonelli, liber and folio number – the liber is 3922, the folio number is 344.

Q. What does that indicate to you? A. That would indicate that there was a transaction in the land records of Montgomery County under the liber and folio listed, to the name Rafaelle Antonelli.

Q. And–? A. It would appear to be a transfer of title or transfer of deed.

Q. You have already explained as to the last exhibit, what the liber and folio meant, the lot and block number. With regard to 69-351, have you encountered that particular number before in your investigation? A. I have encountered a series or the number system which is used by Mr. Andresen, or which was reported to be used by Mr. Andresen, which would list the year and then the case number following the year.

Q. Did you encounter any of these such numbers in the various legal instruments purportedly prepared by Mr. Andresen or signed by Mr. Andresen? I'm referring to deeds of trust, notes, whatever – settlement sheets; numbers such as this. A. I have knowledge of the use of

[114] numbers such as this in Mr. Andresen's preparing documents of that sort.

Q. What, then, does that number represent to you?

A. It would represent to me that a file number 69-351

should reflect the total transaction under the name of Mr. Antonelli.

Q. And that was Mr. Andresen's case number?
A. Yes, it appeared to be.

Q. Did you have or can you recollect on this particular occasion whether or not this document was specifically seen by you at the time of seizure? A. No, I can't.

Q. The same answer as you have given on the other one? A. Yes.

* * * * *

RECROSS-EXAMINATION

BY MR. LAMB:

* * * * *

[118] Q. Again, you have no specific recollection of this document at the time of seizure? A. No.

* * * * *

[121] Q. Have you ever seen that document before today?
A. I believe this is the document within the file that I looked at. It looks more familiar than any other.

Q. Do you have any particular memory of seeing that document at any time personally at the scene? A. Yes.

Q. When? A. At the time I seized them, I think this is the one I'm more familiar with than any of the rest.

Q. Are you familiar with each and every page? There must be – must have been originally fifty pages.

Q. No, not each and every page.

Q. So you didn't review each page? A. No.

Q. Again, this was seized, as the others, because it was part of the Potomac Woods file? A. Right.

Q. And then you took it back to your office and then you looked at it and determined what benefit it would have as evidence in the case? A. Yes.

* * * * *

JOSEPH LAWRENCE
DIRECT EXAMINATION

BY MR. LAMB:

* * * * *

[155] Q. Some seven months preceding this – the charges which give rise to the warrant itself? A. I think that would be some ten months.

Q. Ten months, excuse me. And is that the last and most recent date in that file? A. I cannot answer to that, sir.

Q. Well, all of those documents in that file – not all of them have any direct bearing on scheme or plan or motive, do they? A. No, they do not, sir.

Q. How many documents in that file have bearing on proof of scheme or motive? A. I would have to search the file to tell you exactly how many.

Q. So is it fair to say that there is a substantial part of the file which really tends to prove–nothing that would be evidence, in your opinion, to prove scheme, motive or plan in the carrying out of the operation? A. That's correct.

Q. That is also applicable to a number of other files you related or testified to, that had some indirect bearing on Lot 13T, is that correct? A. Would you say that again, please.

MR. LAMB: I'll withdraw the question. The next file being Number 15, Clark-King to Lyons.

(Defendant's Exhibit 25 marked.)

MR. LAMB: Does that have any direct bearing on Lot 13T? A. No direct bearing, no.

[156] Q. Does it have the same bearing as related in the previous file, namely, tending to show motives, scheme or

carrying out of a plan? A. That particular file also shows knowledge of existing trust as to Lot 13T.

Q. What is the date of the knowledge you can impute to Mr. Andresen? How old is that file? A. Well, there is a document here bearing the dates of – I guess it's April, 1970.

Q. So that means it was thirteen or fourteen months before? A. No, it does not mean that it was thirteen or fourteen months before. That particular document was thirteen or fourteen months before. There's another one here, May of 1970; there's another one of March, 1970. Basically, the documents are dated in the March, April, May period of 1970.

Q. So it is fair to say that it was at least one year prior to the sale of Lot 13T? A. Approximately a year.

Q. And eighteen months preceding execution of the warrant? A. That is correct.

* * * * *

[186] DEBORAH NALLS
CROSS-EXAMINATION

BY MR. LAMB:

* * * * *

Q. Well, your investigation covered Mr. Andresen's activities for at least one year preceding July? A. At times the investigation involved transactions that had begun years before – for example, deeds of trust where the settlement had been years before and they weren't released until the time of our investigation, or after.

Q. At the time you executed the search warrant you were aware of the fact that formal charges were going to be brought very shortly against Mr. Andresen, were you not? A. At the time of the search warrant?

Q. At the time you executed that warrant. A. I knew that – I didn't know for a certainty; I knew that there was a sizeable amount of evidence regarding Lot 13T.

Q. The bill of complaint charging him with four counts of false pretense had already been made up before you ever executed the search warrant, hadn't it? A. I wasn't involved in writing the bill of information.

Q. Well, do you know whether it was written before the warrant was executed? A. I don't know for sure.

Q. It was done by your office, though, wasn't it? A. Yes.

[187] Q. And you knew at that time that you were particularly interested in transactions revolving around 13T? A. That's correct.

Q. That looked like to be the major charge that you were going to bring against Mr. Andresen at that time and you were looking for evidence to prove that crime out of Mr. Andresen's office, weren't you? A. That's true.

Q. And that's the reason why you put together – not you; when I say "you" I mean the State's Attorney's office – that's the reason for putting together the search warrant, to get in there and find evidence to prove the allegations regarding 13T, the false pretense? A. Yes.

Q. And you had suspicion regarding a number of other transactions that you didn't have a lot of evidence about, don't you–didn't you? A. That's true.

Q. Particularly the F.O. Day transaction regarding the deed of trust? A. I was more aware of particular lots.

Q. You were aware of the Holtzclaw– does that name mean anything to you? A. Yes.

[188] Q. And Warfield -- does that name mean something to you? A. Yes.

Q. And Pollitt? A. Yes.

Q. These are all people who were ultimately named as complaining witnesses in the indictment, are they not? A. Yes.

Q. You were aware of those people and the problems that they had before you went in Mr. Andresen's office looking for evidence? A. Yes, I was.

Q. And these people were not named in the affidavit that you prepared – that you assisted in preparing for the search warrant, were they? A. I only indirectly assisted in the preparing of the affidavit.

Q. But you did do title examinations? A. Yes.

Q. And you were an expert as far as the property and title search work? A. I had some background in that, yes.

Q. And you had more background than anybody else in the office regarding titles? A. Yes.

Q. You had sat in on a number of conversations with
[189] members of your office discussing possible charges arising out of Holtzclaw, Pollitt, Warfield, Lot 13 and the F.O. Day trust, is that correct? A. I think you're repeating yourself, because 25R, Warfield, was F.O. Day; the deed of trust that was late on that was F.O. Day. The same is true of 12S, the Pollitts.

Q. Were you also familiar with the Federline security agreement? A. When I walked in with the search party, what I had in mind with regard to 25R and 12S was F.O. Day, because I knew that that was two years late in each case.

Q. It was two years late as to the recording of the instrument, I assume? A. I knew in those two cases it was two years late in payment, which I had learned through their attorneys.

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[191] MR. LAMB: Mrs. Nalls, you went in there with the warrant looking for, in your mind, anything which tended to prove either intent, motive or tend to be evidence in a crime of false pretense regarding Lot 13T? A. That's right.

Q. You were aware of the general investigation regarding a number of other lots and a number of other complaints, a number of other deeds of trust – you were fully aware of their existence and possible problems at that time? A. That's true. In the prosecutor's judgment they did not amount to probable cause, but they would be useful if knowledge was shown, to show absence of mistake.

Q. And as a result of your search you did find enough
[192] evidence to indict, didn't you? A. Yes.

Q. So when you went in there you were short of probable cause with respect to any of these other crimes, but you thought you had probable, or you did have probable cause to assume on Lot 13T, so you were getting in there so that you could look through all the files to find evidence as to Lot 13T only? A. That's correct. We were looking for – I'm sure you can understand this – with a title attorney with a lot of volume as Mr. Andresen had, that an argument of negligence might be quite plausible if it happened in only one case, so we were interested in any evidence tending to show that this happened repeatedly, because it would argue against the possibility of negligence or mistake.

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[209] DIRECT EXAMINATION

BY MR. WERNER:

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A. There is a handwritten document that apparently was in preparation for this listing of lots to be encumbered, one

of which was 13T. There is another handwritten document listing State National Bank to Clark-King. In my judgment it was relating to the same 13T – it says, "New case," and it looks like a direction to set up a file on the State National Bank trust that covered 13T.

Q. Was that some evidence that you felt was worthwhile? A. Yes, I felt if the handwriting were Mr. Andresen's, for example, that might show he gave direction on this trust which encumbered 13T. Now, there is a handwritten note that says, among other things, "Part of the consideration for the deed of trust is evidenced by previously contracted and existing debts." It mentions Quinby – I think Quinby is the name – Clark joint venture, and I knew that Mr. Clark had previously had another partner, and I knew that Clark was Mel Clark, the man who had executed the deed of trust encumbering Lot 13T, and apparently it related – my judgment at the time was that it related to State National Bank negotiations for that deed of trust that encumbered 13T.

Here is a document from Equitable Life Insurance Company – at least with their letterhead; it discusses a deed of trust securing, among other things, 13T. It is apparently to Chicago Title Insurance Company, care of Mr. Andresen, discussing – it's sort of a standard form letter discussing instructions to a settlement attorney, when he

[210] is empowered to disburse funds coming from this lot, but it specifically mentions Lot 13T as one of the lots to be encumbered by Equitable Life Insurance Company.

Q. What is the date of that letter? A. Apparently it's August 1967, apparently an early lien. Here's another handwritten note, very informal, on a yellow sheet; mentions State National Bank which I knew to be the deed of trust; I also knew that covered Lot 13T. It mentions

Mr. Covert whom I knew was handling that deed of trust; mentions Clark-King Construction Company, Incorporated, the party who sold 13T originally and who executed deeds of trust that continued to encumber that property for three years. It mentions again the amount of the State National Bank deed of trust and the rate of interest on the deed of trust that encumbered 13T. There is an adding machine slip that adds up charges and so on on the settlement sheet –

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CROSS-EXAMINATION

BY MR. LAMB:

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[213] Q. What about the other material? A. This is correspondence regarding a loan.

Q. In what year? A. I beg your pardon?

Q. In what year? A. In what year?

Q. What year is the correspondence? A. 1968.

* * * * *

[216] Q. In 1968? A. No; 1967.

Q. 1967, excuse me. Okay, the next document.

* * * * *

WITNESS: This is a handwritten note; I did not know at the time who wrote it – I suspected that Mr. Andresen had. It itemizes the lots that were going to be encumbered by deed of trust where he was the trustee, so this was a memorandum written by a trustee. It was in my judgment, I surmised, regarding the deed of trust where he was a trustee which encumbered 13T.

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DIRECT EXAMINATION

BY MR. WERNER:

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[226] MR. WERNER: Please continue with that file.

A. There is a handwritten note and copy of release, both sides, sent to Tobin. I was interested in knowing whether this release sent under Mr. Andresen's direction or perhaps under Mr. Zentz's direction – that it had in fact been released.

Q. That's a handwritten note? A. That's correct.

* * * * *

[227] This is a balance sheet. As I mentioned, I could locate no escrow books, and this mentions escrow, so I assumed that this is a balance sheet with the escrow holding with respect to 7T. As I mentioned, I was particularly interested in any evidence of intent to not use the purchaser's money to pay off existing encumbrances, and here on this settlement sheet is listed, and this is handwritten, some of the deeds of trust that I knew remained –in fact, the three that I knew remained on that property. Next to it is a bracket, and, handwritten, "Deferred." I knew two were paid late, I knew all three were released late, and when I saw "Deferred," that indicated that that was intentionally done. That seemed to me to strongly negative any argument of negligence in what I regarded as a similar transaction, Lot 13, Block T.

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[230] Q. And that's Mr. Andresen's letterhead on top of that settlement sheet? A. That's right. I was interested in the handwriting on this also, for an analysis. And then there is a settlement sheet for the buyer again on 7T. Following that are handwritten versions. I was interested in a handwriting analysis. Interestingly, apparently there are many things listed on here that appear to be both subcontractors' bills and deeds of trust. Some of them are crossed off. I was thinking that apparently

he was paying these other bills with the money and there wasn't enough proceeds from the sale so he did not pay at that time the assignments that he had crossed off.

Then there is a handwritten copy of the buyer's settlement sheet.

* * * * *

[231] A. It does, only on this copy they're not circled. They are circled on the Xerox copy. There is a stub, apparently a check stub on here with Enterprise Federal Savings & Loan. Enterprise had a construction loan on this piece of property and a permanent loan. This is an accounting to Mr. Andresen. They had $36,000, approximately, outstanding on their construction loan. They were giving a permanent loan for approximately $38,000, so what they sent to Mr. Andresen was the difference, and it was from this that he disbursed monies at the time of settlement.

Q. Did, or did not disburse monies? A. Well, that's correct, but this is the money sent to be disbursed, to pay off encumbrances. Following are letters of assignment to people whom I knew to be subcontractors.

Q. Are those people named in any of those various sets of settlement sheets? A. Yes, and apparently

[232] some of them were paid–Minnix in particular; Standard Supply, Minnix, Mr. Federline, an assignment – I knew him to be a plumber; Maloney Concrete Company and Tassi Dry Wall Service. There is a handwritten note that says, "Pay Minnix," and has the amount, and "7T." I was interested in an analysis of the handwriting to see whether Mr. Andresen had instructed payment on this rather than payment on deeds of trust I knew to be encumbering the property. There are adding machine tallies and they have the case number right on them; one is listed for the seller and one for the buyer.

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[275] MR. WERNER: There are some more pads there, are there not, Mrs. Nalls? A. Yes, and they just bring it up to a more recent date.

Q. So one pad is an older accounting and one a newer accounting. There is a third pad? A. That's correct.

[276] Q. By the way, before you go to the third pad, do any of those cases – are they familiar to you – were they familiar to you at that time, either by lot and block number or by purchaser's name, as any of those lots that were security for the Lumsden and State National deeds of trust? A. They were strikingly familiar. They were the lots I had been on notice for late releases; some of which I knew about late payments; others that I did not.

Q. Such as –? A. The Holtzclaws, the Pollitts, Clark-King; Antonelli, which is 13T; the Belts; the Daughertys; 211 McAuley Park, Mrs. Chepuras; Federline, 11 and 12T and 16S – they have essentially the same rationale in my mind as previous documents I have gone through. Now, the third pad is different. On this there are lots and blocks on the left-hand vertical column. Across the top are the Madison and Lumsden deed of trust, the State National Bank deed of trust, the F.O. Day deed of trust and the Federline deed of trust. My inference from this document was that this was a fairly recent attempt to tally up what was owing on these various lots on these four deeds of trust.

Q. When you say "owing," what do you mean? A. I didn't know whether it was owing or unreleased or what, but the amounts listed on here are curtailment amounts and the lots in question on the sheet are the very same lots that I had been on notice about, plus some other lots, and in my mind was an attempt to straighten out which

[277] ones had been taken care of and which had not. The reason I say "recent" is, there is a red mark on here that says, "Paid July 26, 1972," so my thinking was that this was at least updated through July 26, 1972.

Q. Are one of those lots listed on there, 13T? A. Well, they're actually – this looks like a continuation of this sheet, and on the continuation is 13T, Antonelli, and other very familiar lots – the Belts, the Daughertys, the Chepurases, the Holtzclaws, the Warfields, the Pollitts; and others which I had not been on notice for when I went in.

* * * * *

JOSEPH LAWRENCE
DIRECT EXAMINATION

BY MR. WERNER:

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[290] Q. Okay. Now, in executing or in assisting in executing the search warrant, where, if you recall, did you find this particular document? A. If I'm not mistaken it was on the – well, it was in the office of Peter Andresen at 3700 Decatur Avenue.

Q. And do you recall where it was? A. It was within the files.

Q. Why did you seize it? A. Because I had knowledge of the prior state of the document, and Mr. Andresen's – Mr. Hitchen's allegations.

Q. And furthermore – A. Furthermore, I thought

[291] it was a forgery, and seized this document because I felt as though the original of the document would be the most proper item to use to verify that as far as submitting it for analysis.

Q. What kind of analysis? A. Typewriter analysis.

Q. So you seized that document during the course of the search? A. Yes, I did.

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[292] CROSS-EXAMINATION

BY MR. LAMB:

Q. Agent Lawrence, you suspected a forgery situation when you entered Mr. Andresen's office under the warrant, and that's why you seized that original deed of trust?

A. I suspected a forgery situation when I went there, yes.

[293] Q. And that's why you seized the document?

A. I seized the document so that I might use the original document for analysis.

MR. LAMB: No further.

REDIRECT EXAMINATION

BY MR. WERNER:

Q. Mr. Lawrence, is it accurate to characterize what you knew at the time you went in there as suspicion?

A. Yes, it would be accurate.

Q. That's all you had? A. That's all I had, correct.

Q. Suspicion? A. Right.

* * * * *

[300] MR. LAMB: I'm ready to submit argument, Your Honor.

THE COURT: All right.

MR. LAMB: Your Honor, first of all, the original motion sounds the Fourth and Fifth Amendment rights, constitutional rights under the Fourth and Fifth Amendments. It sounds – the original motion itself sounds very broadly with respect to these two rights or rights that are granted to people under those two amendments, because the two amendments also include certain requirements with respect to validity of search warrants and affidavits presented to judges which support issuance of the search warrants.

First, I would like to start with a broad picture to the validity of the warrants with respect to whether they establish probable cause, and to allow the entry in and search of the property known as 3700 Decatur Avenue and the Plyers Mill Road address.

* * * * *

[304] In addition, Your Honor, with respect to the allegation contained in the affidavit, they allege as substantial proof of the fact that there has been a false pretense that when State National was contacted they allegedly had not been paid, when in fact prior to – within a month or two months prior to the execution of the affidavit, in the affidavit itself it acknowledges they had received payment and released Lot 13T, which I submit if Your Honor considers on the basis of a continuing offense, a continuing false pretense, the false pretense had in fact terminated and ceased by that time, because the release had been filed and the money had been paid to State National Bank to release their lien of record as it involved Lot 13T. Now, in addition –

THE COURT: That was when?

MR. LAMB: The money was paid State National on September 13th, I think, of 1972, and the release was obtained, executed and recorded with respect to Lot 13T, being some forty-five days or so prior to the swearing of the affidavit, yet the affiants include this in their application for the warrant as probable cause to believe a false pretense, according to Your Honor's theory, is being per-

[305] formed on the premises–

THE COURT: I didn't say that that was my theory– I just asked you–

MR. LAMB: Yes, Your Honor; in trying to support the continuing false pretense theory to justify that a crime

is now being committed on the premises, I submit that this defeats the alleged probable cause of that false pretense.

In addition to that, there is an allegation regarding the Madison National Bank note, known – formerly known as the Lumsden note, and as testimony I believe from Agent Moyer, and I stand to be corrected, that upon contacting Mr. Hecht in September of 1972, he acknowledged that he had in fact received a check in the amount of $2,000 designated as payment for Lot 13T, and that he was refusing to release Lot 13T because there was a challenge with respect to other underlying liabilities as to what that money should be applied to.

I submit to the Court that taking that testimony, taking the application for the search warrant and putting them together that at the time this affidavit was sworn to, Madison had been paid and they knew they had been paid in September – on September 13, 1972; and in fact, State National had been paid, each being paid forty-five days before the swearing by the affiants to the application for the warrant, which I submit if this were to be considered a continuing false pretense, this defeats that argument;

* * * * *

[307] Now, with respect to the format, particulars of the warrant itself, I will direct my attention in this argument only to 3700 Decatur Avenue and I would ask the Court to compare the application for the search warrant in that particular one to the affidavit in support of the search warrant for the Plyers Mill Road address, with particular reference to the facts, the probable cause which gives rise for a judge or magistrate in reviewing the application to believe that the articles sought are in fact upon the property intended to be searched at the time the warrant is to be executed. These have to be fresh facts, they have to

name the place with particularity that they are going to search; they have to identify with particularity the items to be seized. In the warrant as it applies to the 3700 Decatur Avenue address there is not a scintilla of evidence alleged in the application and affidavit in support of the search warrant to give rise to any reasonable belief to believe that any evidence they are seeking under the "wherefore" clauses was in fact being secreted in the address known as 3700 Decatur Avenue.

* * * * *

[309] Now, I submit that if you review the application and affidavit closely there isn't one paragraph nor one sentence which details why there is a reasonable ground to believe that any evidence whatsoever is contained in Mr. Andresen's office, particularly when they are at the same time issuing another search warrant for another address on the same basis. They are looking for the same thing in two different places and they are not even sure where they're going to find it, so they hit the two logical places Mr. Andresen might be holding the papers, and I submit that the mere statement in the opening parts of the application, that it is a law office located on Decatur Street, is not adequate – that is merely a conclusion of the affiant and, without more, does not justify a judge in finding reasonable or probable cause to believe the evidence sought is located in that address, particularly with the false pretense which was alleged to have taken place in July of 1972 and, at the very latest, under the concept of continuing false pretense, had stopped by September 13, 1972; and I submit that, on the basis of that, the warrant itself is deficient and fails, and the search and seizure of everything from the Decatur Street property – nothing should have been seized because the officers

and agents should not have been within the premises; the warrant should not have been issued.

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[315] We submit that under the recent case law, including Hill versus Philpott and even citing U.S. v. Bennett, which is the State's case, in order to distinguish it from our facts, that the Court must conclude whether the evidence is testimonial or communicative. If it is, then the Court can decide, although it may be a reasonable search under the Fourth Amendment, it is important then to decide, if reasonable, does it violate the defendant's Fifth Amendment rights, and only when it is communicative or testimonial in nature would it be classified as a possible violation of the defendant's Fifth Amendment rights. This is taking into consideration Snell v. California, where they were dealing, I believe, with a blood test – they found that that was not testimonial or communicative. So I submit to the Court that the Fourth and Fifth have to work together; you have to go first to determine whether you have reasonable search; if you don't, you never reach the Fifth Amendment question.

In Warren v. Hayden they did not have a search warrant, they had an arrest; and they justified the arrest without warrant because of the circumstances and seizure incident to the arrest was justified because those items were not considered testimonial or communicative. And I submit in this case that they are – they are personal files of an attorney in his office, they are handwritten notes which

[316] have been testified to, that they suspected them to be those of Mr. Andresen; and I think it goes without saying from the testimony introduced previously that they were Mr. Andresen's files.

THE COURT: Do you agree, first of all, that the cases upheld that you can take a man's blood, you can pump

his stomach, cut his hair, do many other things, and they have held that those all would be not in violation of the Fifth Amendment?

MR. LAMB: Well, Your Honor, I think they have found specifically in those cases that the particular tests or evidence that has been taken did not –

THE COURT: Even scraped the skin, in one case.

MR. LAMB: I'm not familiar with that. I know when it comes down to handwriting exemplars, and in sex cases they've taken pubic hairs and hair samples and all that, and that has been accepted because, in and of itself it does not require the defendant to come in and give testimony to challenge the validity of what was taken, whereas when you get into written documents, books, records and things of that nature, you're talking about things which are similar in nature to confessions and personal papers as was cited in the Philpott case, in which he was a doctor and he kept sets of books with respect to his patients, and they seized those and they found that they were in

[317] fact testimonial or communicative, and although the seizure might be valid under the Fourth Amendment, when it gets to a consideration of the types of evidence seized under the Fifth Amendment, if it tends to require that the defendant take the stand and defend himself, it in fact violates his Fifth Amendment rights – it is forcing him to testify against himself because if they introduce the documents against him, he has no alternative but to testify to refute that. So it shifts the burden to testify over to the defendant, which is contrary to our current system of jurisprudence – he is not required to come forth and prove his innocence. By allowing these types of documents it would in fact be doing that, and I submit to the Court that the first determination, whether they are communicative or

testimonial – if they are, it is a violation of his Fifth Amendment rights, and in this case I submit that they are.

Now, the Court then, accepting Warren v. Hayden, we get on to the question of what can be seized even under an evidentiary warrant. I submit that the warrants we have before us now are general warrants and they are not particular in nature, and I read to the Court the language contained in the warrant itself, which I say is the binding language that applies, and the Court can disregard at this juncture, if the Court so chooses -- disregard the application altogether. That is merely the basis for the warrant. The question is, what is the legal authorization of those

[318] people to seize what they did, and it says, in essence, that, "There are now concealed upon said premises the following items pertaining to sale, purchase, settlement and conveyance of Lot 13, Block T, Potomac Woods subdivision, Montgomery County, Maryland," colon, and then it goes on further to define what they are allowing to be seized – title notes, title abstracts, all relating to 13T, and then it goes through and itemizes the types of things they're talking about, and then it gets down to the last four lines of that paragraph when it says, "and correspondence showing or tending to show a fraudulent intent and/or knowledge as elements of the crime of false pretense," and gives the violation of the article, "as amended and revised, together with other fruits, instrumentalities and evidence of a crime at this time unknown."

I submit to the Court with respect to both of those warrants that this is a general warrant, it isn't – they were very particular, if we take the warrant on its face, they were particular when it started as to 13T and those things directly affecting 13T, and I submit that that language, if the Court rules against me on the other argument– that

language is specific, and that's fine; and then you come up at the end and give a blanket authorization to seize anything and everything which in the mind of the searcher might be relevant – is a general warrant. That warrant permits that person to search, to enter into every file,

[319] everything in the office –

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS ON MERITS

CARL ZENTZ
DIRECT EXAMINATION

BY MR. WERNER:

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[315] Q. And do you have any other title searchers working at Mr. Andresen's office? A. Yes.

Q. And were they under your control and supervision? A. Yes.

Q. But those documents are all in your handwriting? A. Yes, these are. I don't know about this one.

Q. I would offer into evidence 1B, IC and ID.

Lamb: I would object, your Honor.

Court: On what ground.

Lamb: The grounds that have been raised previously at the pretrial motions and from the standpoint that his capacity related to Mr. Andresen; personal work product.

Court: We went through all that before?

Lamb: Yes, Your Honor.

Court: Objection overruled.

Q. Court's indulgence (Pause). With respect to 1B, there is nothing written alongside 7T or 13T. What would that indicate to you on looking at that document. A. There would be . . . .

Lamb: Your Honor, I would object. The document speaks for itself. Unless he can say specifically why he left it out.

Court: I will sustain the objection.

Q. I show you what is marked for identification as State's Exhibit 1E and ask you if you can identify that
[316] document? A. Yes. It is a list that I made up.

Q. Is it in your handwriting? A. Yes, it is.

Q. Do you have a general name that you give that list? A. Not really, no.

Q. For what purpose was it made up? A. It was made up by me to provide myself with a quick, fairly quick summary of what deeds of trusts were still in existence on certain lots at certain dates.

Q. Was that kept in the basic file for Potomac Woods? A. I think so; yes.

Q. Okay. The State would offer it in evidence.

Lamb: I would offer the same objection, your Honor.

Court: Objection overruled.

Q. Mr. Zentz, some of these notations have X's through them. What does that indicate? A. I just when they were released, I just marked through them so I wouldn't get confused.

Q. Now, can you tell through what date this document was updated? A. Yes, sir.

Q. What date was it updated? A. It appears to be updated through April 25, 1972.

Q. 1972, is that what you said? A. That's right.

[317] Q. Would you look please at Lot 7T. Indicate if there exists on that list without being x'd out any deeds of trust?

Lamb: Your Honor, I would object to the question from the standpoint that again the document

would speak for itself and in essence they are trying to allow him to give an opinion as to what the condition of that lot was as to releases and they want him to testify from the document.

Q. If the Court please, the document, of course, speaks for itself, but I want certain selected sections of it only brought to the attention of the jury and he is merely reading what the document reflects.

Court: I will overrule the objection. You may testify.

Q. 7T. A. This shows . . . . according to this there is one deed of trust.

Q. Please keep your voice up. A. According to this, there appears to be one deed of trust that had not been released as of this date.

Q. What does the notation say? A. It says Lot 7, Block T, Section 10, Liber 3773, Folio 598, State National.

Q. Is that all it says – State National? A. That is all that says; yes.

Q. Do you know what that instrument is that is referred to in there? Are you familiar with it? A. I only noted the deed of trust on here so I . . . .

Q. I understand that. Are you familiar with that instrument? A. Well, I have seen it before.

[318] Q. Do you know in what amount it was? A. Not offhand.

Q. Okay. With respect to Lot 13T, are there any un-x'd notations of yours on that? A. Yes.

Q. How many? A. Two.

Q. And what do they say with respect to Lot 13T? A. They say, . . . well, no. 1, it is Liber 3773, folio 598, State National, and the second one is Liber 3797, folio 799, Lumsden.

Q. With respect, ... by the way, was there check marks signed here in different colors? What do they indicate? A. I really don't remember.

Q. Were the x's x'd with these deeds of trust all put on there at the same time? A. No.

Q. Were they all put on there in two times or three times or when? A. It is hard for me to tell. That thing wasn't updated after April 25, 1972. That is over a year ago and I really don't remember.

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GEORGE YOUNG
DIRECT EXAMINATION

BY MR. WERNER:

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[482] Q. Okay, I show you what is marked for identification, State's Exhibit 20E. A. That looks like the contract.

Q. Do you have a copy of it? A. Yes.

Q. And would you compare it? A. This is a ratified copy you're showing me. The first one drawn wasn't ratified, and then it was ratified.

Q. Did you later see it ratified? A. Yes.

THE COURT: What do you mean by "ratified"?

A. Accepted by the sellers.

MR. WERNER: Does that appear to be an accurate copy of it, or an accurate original? A. Yes.

MR. WERNER: I would offer it in evidence.

THE COURT: Is there any objection?

MR. LAMB: Subject to the objection that I raised pretrial, Your Honor.

THE COURT: All right. It will be admitted.

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[485] Q. I show you what has been marked State's Exhibit 3A and ask if you recognize this document. A. This

looks like the settlement statement for the buyer.

Q. Do you have a photocopy of it? A. Yes. The only thing is, it's signed by Audrey Young, and I have copies that are signed by myself, of the same statement.

Q. Do you recognize your wife's signature? A. Yes.

[486] Q. That is your wife's signature on the marked copy?

A. Yes.

Q. And your copies were signed by yourself?

A. Myself. It could have been that at the table I signed some, and Audrey might have signed some, or Mrs. Young.

Q. That is your signature? A. Yes.

Q. And otherwise conforms to your copy? A. Yes.

MR. WERNER: I offer it in evidence.

THE COURT: Is there any objection?

MR. LAMB: Subject to the same objection, Your Honor.

THE COURT: Well, now –

MR. LAMB: To be quite honest, to preserve the record – I apologize, Your Honor.

THE COURT: All right. I don't think it's necessary; I think the record is preserved without renewing your motion. But you're not contending that there are any items here that had not been ruled on?

MR. LAMB: No, Your Honor.

THE COURT: It will be admitted.

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